(9)

No. 83-1935-CFX
Status: GRANTED

Title: Tony and Susan Alamo Foundation, et al., Petitioners
v.
Secretary of Labor

Docketed:
May 25, 1984

Court: United States Court of Appeals
for the Eighth Circuit

Counsel for petitioner: Gean Jr.,Roy

Counsel for respondent: Solicitor General

Entry	Date	Note	Proceedings and Orders
1	May 25 1984	G	Petition for writ of certiorari filed.
3	Jun 28 1984		Order extending time to file response to petition until July 28, 1984.
4	Jul 25 1984		DISTRIBUTED. September 24, 1984
5	Jul 26 1984	X	Brief of respondent Donovan, Sec. of Labor in opposition filed.
6	Sep 21 1984	X	Reply brief of petitioners Tony & Susan Alamo Foundation, et al. filed.
8	Oct 1 1984		REDISTRIBUTED. October 5, 1984
10	Oct 9 1984		REDISTRIBUTED. October 12, 1984
11	Oct 15 1984		Petition GRANTED.
			**********
12	Nov 30 1984		Joint appendix filed.
13	Nov 30 1984		Brief of petitioner Tony & Susan Alamo Found. filed.
15	Dec 10 1984		Order extending time to file brief of respondent on the merits until January 14, 1985.
16	Jan 7 1985	G	Motion of American Civil Liberties Union for leave to file a brief as amicus curiae filed.
17	Jan 15 1985		Brief of respondent Donovan, Sec. of Labor filed.
18	Jan 21 1985		Motion of American Civil Liberties Union for leave to file a brief as amicus curiae GRANTED. Justice Powell OUT.
19	Jan 28 1985		Record filed.
20	Feb 5 1985		SET FOR ARGUMENT. Monday, March 25, 1985. (1st case).
21	Feb 11 1985		CIRCULATED.
22	Mar 14 1985	X	Reply brief of petitioners Tony & Susan Alamo Foundation, et al. filed.
23	Mar 25 1985		ARGUED.

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No. _____

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In The

Supreme Court of the United States

October Term, 1983

TONY AND SUSAN ALAMO FOUNDATION, TONY ALAMO, SUSAN ALAMO, AND LARRY LAROUCHE,

Petitioners,

v.

RAYMOND J. DONOVAN, SECRETARY OF LABOR,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Roy Gean, Jr.
Gean, Gean & Gean
First America Building
Suite 500, 524 Garrison Avenue
Fort Smith, Arkansas 72901-2519
501-783-1124

Attorneys for Petitioners

COCKLE LAW BRIEF PRINTING CO., (800) 835-7427 Ext. 333

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QUESTIONS PRESENTED

1. Is an individual an "employee" as defined by the Fair Labor Standards Act when he renders services to a religious or charitable organization on a voluntary basis with no expectation or desire of compensation or wages in any form as a result of such services?

2. Is an individual an "employee" as defined by the Fair Labor Standards Act because he volunteers his services to a religious or charitable organization if such services are rendered by others who receive compensation for the same services from other organizations?

3. Should the Fair Labor Standards Act and its provisions be applicable to a religious or charitable organization when it uses the services of volunteers?

4. Is the application of the Fair Labor Standards Act to the petitioners violative of the Free Exercise of Religion Clause and/or the Establishment Clause of the First Amendment to the United States Constitution?

5. Is the Secretary of Labor's attempted application of the Act to the petitioner a willful and oppressive denial of that equal protection of the law, which is secured to the defendants, as to all other persons, by the Constitution of the United States?

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OPINIONS DELIVERED BELOW

The opinion of the United States District Court for the Western District of Arkansas is reported at 567 F. Supp. 556 (1982) and is printed in its entirety in the Appendix attached hereto at pages App. 1-40. The opinion of

the United States Court of Appeals, Eighth Circuit, is reported at 722 F. 2d 397 (1983) and is printed in its entirety in the Appendix attached hereto at pages App. 48-63.

GROUNDS UPON WHICH JURISDICTION IS INVOKED

The opinion of the United States Court of Appeals for the Eighth Circuit was entered on December 5, 1983. (See Appendix, pages App. 48-63.) Both parties to this action filed timely petitions for rehearing, which were denied by Order of the United States Court of Appeals for the Eighth Circuit on March 1, 1984. (See Appendix, page App. 68.) The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitutional Provisions

U. S. Const. Amend. I. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U. S. Const. Amend. V. No person shall be . . . deprived of life, liberty, or property, without due process of law. . . .

Statutes

28 U. S. C. § 1291
29 U. S. C. § 201
29 U. S. C. § 203(e) (1)
29 U. S. C. § 203(g)
29 U. S. C. § 203(m)
29 U. S. C. § 203(r)
29 U. S. C. § 203(s) (1), (3), (4), (5), and (6)
29 U. S. C. § 206(a (1)
29 U. S. C. § 206(b)
29 U. S. C. § 207(a) (1)
29 U. S. C. § 211
29 U. S. C. § 215(a) (2) and (4)
29 U. S. C. § 215(b)
29 U. S. C. § 217
Internal Revenue Code § 501(a) and (c) (3)

Regulations

29 CFR § 516.27
29 CFR § 516.7(b)
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29 CFR § 531.3
29 CFR § 531.29
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29 CFR § 531.31
29 CFR §531.32(a)
29 CFR § 531.33
29 CFR § 541.118(a)
29 CFR § 779.212
29 CFR § 779.213
29 CFR § 779.214

Miscellaneous

Senate Report No. 145, 87th Cong. 1st Sess. (1961) reprinted in 1961 U. S. Code Cong. & Admin. News, 1620, 1660.

Senate Report No. 1487, 89th Cong. 2d. Sess. (1966) reprinted in 1966 U. S. Code Cong. & Admin. News, 3027.

(Only citations for the above list of statutes, regulations, and other authorities are provided at this point; their pertinent text is set forth in the following Appendix.)

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STATEMENT OF THE CASE

1. *Facts Material to the Consideration of Questions Presented.* The Tony and Susan Alamo Foundation was founded by the petitioner, Tony Alamo, and his wife, Susan Alamo, now deceased, and was incorporated under the laws of the state of California on January 29, 1969. Subsequent to its incorporation, the Foundation applied for, and received, a certificate of authority to conduct its affairs in the state of Arkansas. As set forth in its Articles, the express purposes of the Foundation are:

> To establish, contain and maintain an Evangelistic Church; to conduct religious services, . . . to educate, ordain, support and appoint ministers, evangelists, missionaries and workers in connection therewith, . . . to build, equip and operate trade schools and workshops and co-ordinate with allied institutions. . . .

On December 18, 1974, the Foundation secured an exemption from taxation under § 501(c) (3) of the Internal Revenue Code as a corporation organized and operated exclusively for religious purposes with none of its net earnings inuring to the benefit of any private shareholder or individual. (*See,* Defendants' Exhibit 31 and *Memorandum and Order,* of the United States District Court for the Western District of Arkansas (hereinafter referred to simply as *Memorandum and Order,* para-

graph II, App. 2.) Such tax-exempt status has not been altered, amended, canceled, or revoked, but has been maintained since that time. (Tr. Vol. II, p. 197.)

As found by the District Court, the Foundation is "an outgrowth of the evangelistic efforts of Tony and Susan Alamo". (*See, Memorandum and Order,* App. 6.) The Foundation has established churches throughout the United States (Tr. Vol. II, p. 201), and sends individuals across the country to witness and testify about Christian principles and doctrines in rest homes, hospitals, reformatories, and detention centers. (Tr. Vol. II, p. 201.) The founder, Tony Alamo, contends that the Foundation is "the strongest soul winning work in the country". (Tr. Vol. II, p. 203.)

The Foundation's evangelical activities are performed by approximately three hundred inviduals who are generally referred to as "associates". Prior to their association with the Foundation, most were addicted to or users of drugs or engaged in criminal activity. As found by the District Court, the work of the Foundation, through Tony and Susan Alamo, provided spiritual and moral assistance to these individuals. (*See, Memorandum and Order,* App. 7; Bill Levy, Tr. Vol. II, p. 71; Ann Elmore, Tr. Vol. II, p. 123; Ed Mick, Tr. Vol. II, p. 156-164.) The associates, however, are only a fraction of the people who have been converted, encourged, or assisted by the Foundation. (Tr. Vol. II, p. 202.)

The associates can be distinguished from other individuals who are or were influenced by the Foundation's ministries in that they (the associates) desire to become evangelists or pastors and to "give their life to the Lord"

(Tr. Vol. II, p. 204), and in that they live on Foundation property. As stated by Tony Alamo, before these individuals are taken into the Foundation, they must "convince us without shadow of a doubt" that they "really want to become evangelists, . . . [or] pastors, [and] that [they] want to give their life to the Lord". (Tr. Vol. II, p. 204.)

Though the Foundation receives contributions from the public, it does not solicit them. (*See, Memorandum and Order,* paragraph XI, App. 8.) One source of income is the operation of the following:

Activity	*Type of Activity*	*Location*
Alamo Discount Grocery	Retail sales of groceries	Alma, AR
Alamo Construction	Construction	Alma, AR
Alamo Telegraph	Western Union	Alma, AR
Alamo Auto Repair	Vehicle repair	Alma, AR
Alamo Freight	Freight-trucking	Alma, AR
Alamo Ready-Mix	Ready-mix concrete	Alma, AR
Alamo Farms	Hog farms	Alma, AR
Alamo Roofing	Roofing construction	Alma, AR
Alamo Record Company	Production of records	Alma, AR
Forth-Smith Mobile Nursery	Landscaping	Alma, AR
Alamo DX	Service station	Alma, AR
Alamo Restaurant	Restaurant	Alma, AR
Alamo of Nashville	Retail sales of clothing	Nashville Tennessee
Tennessee Boy	Distribution	Nashville Tennessee

Other activities were listed in the District Court's Memorandum and Order; however, the majority were never in operation or were closed during the pendency of this action.

Though the annual gross volume of sales derived from the activities listed above exceeds $250,000.00, the net operating result was, and continues to be, a loss. (Tr. Vol. II, p. 200.)

The Secretary contends, and the District Court held, that the above activities are a part of an "enterprise" within the meaning and definition of Section 3(v) of the Act, (29 U.S.C. § 203(v)) in that the Foundation operated the activities as businesses under common control for common business purposes. Despite the District Court's conclusion of "enterprise", it made the following findings:

> The Foundation secured an exemption from taxation under 501(c) (3) of the Internal Revenue Code as a corporation organized and *operated exclusively for religious purposes with none of its net earnings inuring to the benefit of any private shareholder or individual.* (*See, Memorandum and Order,* para. II, App. 2, emphasis ours.)
>
> The Foundation is an outgrowth of the evangelistic efforts of Tony and Susan Alamo. (*See, Memorandum and Order,* para. X, App. 6.)

The petitioners contend that the above listed activities are merely extensions of the Foundation's ministries in that they provide the associates, who were addicted to drugs or engaged in criminal activity, a forum for rehabilitation, and a forum for spreading their religious beliefs. Consequently, each separate activity is viewed by the associates as a "church in disguise". In addition, these activities serve the needs of the associates. For example, the restaurant provides, without charge, meals to the associates and their families, as the clothing store freely provides clothing. Many of the activities, though labeled "commercial enterprises" are operations maintained sole-

ly for the benefit of the associates. One such operation is the "Alamo Sewing Room", which was found by the District court to be a business. The "Alamo Sewing Room" was described, however, by one of the associates as follows: "[T]hat was a sewing bee, like a sewing circle. Women got together; my wife participated in it went down there and sewed clothes for my little boy, and things like that." (Tr. Vol. II, p. 193)[1]

The Secretary of Labor contends that these activities are related and are conducted for a common business purpose and thus comprise an "enterprise" as defined by Section 3(r) of the Fair Labor Standards Act. 29 U. S. C. § 203(r). The petitioners maintain that these activities were created and are operated exclusively for religious purposes. Notwithstanding the Secretary's position, these activities have been accepted by the Internal Revenue Service as activities related to the Foundation's exempt (religious)purpose. (Tr. Vol. II, p. 202)

The overwhelming majority of the work performed in the operation of these activities is done by the associates. Most of the associates' time, however, is spent in religious activity such as reading the Bible, witnessing, and testifying. (Tr. Vol. II, p. 73; Tr. Vol. II, pp. 127-128; Tr. Vol. II, p. 165.)

The associates testified at trial that they consider their association with the Foundation to be ministerial training. (Tr. Vol. II, p. 205.) Furthermore, the associates consider their services in the operation of these activities

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[1]This is the only evidence presented to the District Court that described the nature of the "Alamo Sewing Room".

to be on a voluntary basis, without expectation or desire of wages or compensation in any form. (Tr. Vol. II, p. 100; Tr. Vol. II, p. 135; Tr. Vol. II, p. 175.)

As found by the District Court: "The Secretary failed to produce any past or present associate of the Foundation who viewed his work in the Foundation's various commercial businesses as anything other than 'volunteering' his services to the Foundation." (*See, Memorandum and Order*, App. 7.)

The associates do receive benefits from the Foundation in the form of lodging, meals, medical care, clothing, furnishings, and child care.

The Secretary of Labor contends, and the District Court so held, that the associates are "employees" as defined by the Fair Labor Standards Act. The petitioners contend (1) that the associates are not covered by the Act, and (2) that any attempted application would be constitutionally prohibited as well as improper.

2. *Procedure Below.* (Including Basis for Federal Jurisdiction) On December 19, 1977, in the United States District Court for the Western District of Arkansas, the Secretary of Labor initiated an action against the Tony and Susan Alamo Foundation, Tony Alamo and Susan Alamo (its officers and founders), and Larry LaRouche, an associate of the Foundation, allegedly in accordance with Section 17 of the Fair Labor Standards Act of 1938, as amended, 29 U. S. C. § 217, for alleged violations of Sections 6, 7, 11, and 15 of the Fair Labor Standards Act (29 U. S. C. §§ 206, 207, 211, and 215).

Other than the petitioners, the alleged violations concern two groups of individuals. The first group is com-

posed of eighteen individuals who were undeniably employees as defined by the Act. These individuals were from "outside" the Foundation and were hired to render specific services. The members of this group throughout the trial were referred to as "outside workers". The question involving this group was whether the wage received by the "outside workers" was sufficient to meet the minimum wage and overtime provisions of the Fair Labor Standards Act. (Tr. Vol. I, p. 12.) The second group is comprised of approximately three hundred individuals who live on Foundation property and who call themselves volunteers. As stated above, the word "associates" was, and is, used to identify the members of this group. (*See, Memorandum and Order*, App. 6, footnote 2.) The Secretary of Labor contends that back wages totaling approximately nineteen million dollars ($19,000,000.00) are due the associates.

On December 13, 1982, and several months following the actual trial of this case, the District Court entered its decision in a forty page *Memorandum and Order*. With regard to the "outside workers", the District Court found overtime compensation violation in the amount of pay due nine of the eighteen "outside workers". (*See, Memorandum and Order*, App. 29-34.) The petitioners were ordered to pay these nine individuals the sum of $14,087.86. As to the "associates", the Trial Court found them to be "employees" as defined by the Fair Labor Standards Act, and directed the defendants and the Secretary to supply each associate with written notice advising "any associate who desires to submit a claim for back wages to submit a claim in the form of an affidavit within 45 days of mailing of the notice. . . ." (*See, Memorandum and Order*, App. 39.)

The claim would be reduced by the value of the applicable benefits (e. g., lodging, board, etc.) received by each associate. (*See, Memorandum and Order*, App. 40.) On December 23, 1983, the petitioners, seeking the reversal of the orders entered below, filed a *Notice of Appeal* in the United States Court of Appeals for the Eighth Circuit in accordance with the Federal Rules of Appellate Procedure. On January 13, 1983, the respondent filed *Plaintiff's Motion for Clarification and Amendment of Memorandum Decision and for Entry of Judgment.* The District Court granted said *Motion*, entered an *Order* modifying the aforesaid *Memorandum and Order*, and entered a *Judgment.* The petitioners accordingly refiled their *Notice of Appeal*, and the respondent filed his *Cross-Appeal* seeking a restitutionary injunction.

After considering the parties' Briefs and after hearing oral argument, the United States Court of Appeals for the Eighth Circuit on December 5, 1983, filed its opinion wherein the District Court's *Order* of December 13, 1982, was vacated and remanded, in part, for determination of the amounts of wages due the associates; such determination to be based either upon the present record or on the record supplemented by such additional evidence as the District Court may afford the parties an opportunity to offer.

Petitions for rehearing were timely filed by both parties, and both were denied as set forth in the Order of the Court of Appeal for the Eighth Circuit entered and filed on March 1, 1984.

REASONS FOR THE ALLOWANCE OF WRIT

(Rule 17 of the Rules of the Supreme Court)

1. *Decision in Conflict with Decisions of Federal Courts of Appeals and with a Decision of this Court.*

The decision of the United States Court of Appeals for the Eighth Circuit in this case is in conflict with the decision of the United States Court of Appeals, Second Circuit, rendered in the case of *Rogers v. Schenkel,* 162 F. 2d 596 (1947); with the decision of the United States Court of Appeals, First Circuit, rendered in the case of *Turner v. Unification Church,* 602 F. 2d 458 (1979); and with the decision of the United States Supreme Court rendered in the case of *Walling v. Portland Terminal Co.,* 330 U. S. 148, 67 S. Ct. 639, 91 L. Ed. 809 (1947).

As noted above, at all times relevant to this action, there were approximately three hundred (300) individuals associated with the defendant Foundation, who were referred to as "associates". The salient issue in this case is whether the associates are "employees' as defined by the Fair Labor Standards Act.

Pursuant to the District Court's pre-trial order of March 20, 1982, the petitioners called three associates to testify concerning their relationship with the Foundation, with the understanding and agreement that their testimony would be representative of all the associates of the Foundation.[2] (Tr. Vol. I, pp. 9-11.) The Secretary of

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[2]DISTRICT COURT: Why don't you pick out two or three of them, and we will assume that if the ones whose statements

(Continued on following page)

Labor was given the opportunity to call any associate who would testify differently from the three representative associates. (Tr. Vol. I, p. 9.) The three who testified in such representative capacity were Bill Levy, Ann Elmore, and Edward Mick. (Tr. Vol. II, pp. 70-194.) (Other associates testified; however, their testimony concerned other aspects of this action.)

After hearing their testimony and after reading the depositions of several former associates, the District Court found:

> The Secretary of Labor failed to produce any past or present associate of the Foundation who viewed his work in the Foundation's various commercial businesses as anything other than "volunteering" his services to the Foundation.[3]
>
> Typical of the associates' attitude about the Secretary's efforts in their behalf is that of Ann Elmore. Mrs. Elmore testified convincingly that she considered her work in the Foundation's businesses as part of her ministry. She views the businesses as a vehicle for preaching, witnessing, and testifying in support of religious beliefs of those associated with the Foundation. She does not work for the Foundation for material rewards; she does it in furtherance of God's command to spread the gospel. Mrs. Elmore said that she never expected any compensation from the Foundation, and the thought of receiving wages for her work is "vexing to my soul".

[3]Some of the witnesses who testified by deposition were former associates who had become disillusioned

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were furnished testified on that issue they would testify the same way. How will that be, Mr. Fitz? COUNSEL FOR SECRETARY OF LABOR: I don't suppose there would be any problem with that, Your Honor. DISTRICT COURT: Mr. Fitz, if you find some among that group you think would testify to the contrary, of course, you are free to call them. (Tr. Vol. I, p. 9.)

with the Foundation and Tony Alamo. Nevertheless, at the time they were at the Foundation and working in its business, they considered themselves "volunteers" of their services.

The Fair Labor Standards Act defines the term "employee" to mean "any individual employed by an employer". (*See*, 29 U. S. C. § 203(e) (1).) The term "employ" is defined under the Act to include "suffer or permit to work". (*See*, 29 U. S. C. § 203(g).)

This Court, in the case of *Walling v. Portland Terminal Co.*, 330 U.S. 148, 67 S. Ct. 639, 91 L. Ed. 809 (1947), clarified the meaning of the phrase "suffer or permit to work", as follows:

> The definition "suffer or permit to work" was obviously not intended to stamp all persons as employees. . . . [S]uch a construction would sweep under the Act each person who, without promise or expectation of compensation, but solely for his personal purpose or pleasure, worked in activities carried on by other persons either for their pleasure or profit. But there is no indication from the legislation now before us that Congress intended to outlaw such relationships as these. The Act's purpose as to wages was to insure that every person whose employment contemplated compensation should not be compelled to sell the services for less than the prescribed minimum wage. *Id.* at 330 U. S. 152.

The case of *Turner v. Unification Church*, 473 F. Supp. 367, aff'm. 602 F. 2d 458 (1st Cir. 1979) applied *Portland Terminal* to a factual situation similar to the case at hand.[3] In *Turner*, the District Court granted

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[3]The *Turner* case and the case under review are similar as to the facts directly relevant to the issue discussed under

(Continued on following page)

the defendant's Motion to Dismiss, finding that the Complaint failed to state a claim upon which relief could be granted.

In her Complaint, the plaintiff, Shelley Ann Turner, alleged that she was forced to work long hours of compulsory service soliciting money and selling candies, flowers, and tickets for the Unification Church rallies. For these efforts she allegedly received no monetary compensation, but was provided with food and shelter. Viewing the allegations set forth in Turner's Complaint in their most favorable light, the Court, granting the defendants' Motion to Dismiss, stated:

> [21] In order to be covered by the F. L. S. A., plaintiff must be an "employee" as defined by 29 U. S. C. § 203. That section defines the term employee cryptically: "any individual employed by an 'employer'." The term has been interpreted broadly, see *Rogers v. Schenkel*, 162 F. 2d. 596 (2d. Cir. 1947), but an employee must still be a "person whose employment contemplated compensation". *Walling v. Portland Terminal Co.*, 330 U. S. 148, 67 S. Ct. 639, 91 L. Ed. 809 (1947). The plaintiff's Complaint indicates that she never contemplated any monetary or tangible compensation for the Unification Church. Certainly, Turner's services cannot be termed voluntary or gratuitous as she was allegedly being held in involuntary servitude.
>
> . . .

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this point. The cases can be equated in that there was work performed in a "religious" setting, and that the individual worker expected no wages or compensation. The similarities of the cases do not extend to religious doctrine, to methods of "recruiting" individuals, or to beliefs regarding solicitation of money.

> Despite the plaintiff's laudible desire "to create a better world," performing services for charitable purposes without expecting any tangible compensation does not give rise to an employer-employee relationship within the meaning of the F. L. S. A. Therefore, plaintiff cannot claim a cause of action under 29 U. S. C. § 216. *Id.* at 377.

It is well settled that a person who intends his services to be voluntary and to be rendered without compensation is not an "employee" within the meaning of the Fair Labor Standards Act. (*See also, Roger v. Schenkel, supra.*; *Bowman v. Pace Co.*, 1 WH Cases 119 (5th Cir. 1941).)

In the case at hand, the District Court erroneously stated:

> Although the associates expected no compensation in the form of ordinary wages, they did expect the Foundation to provide them food, shelter, clothing, transportation and medical benefits. (*See, Memorandum and Order,* p. 6).

As in *Turner, supra.*, the associates did receive food and shelter; however, the representative associates testified that their efforts were not for material reward and were not given in expectation of benefits such as food and shelter.

With reference to the benefits he and his family received, Bill Levy stated:

> [B]ut even if I didn't get such great benefits, I would still do what I am doing because it's my belief in the Almighty.
>
> . . .
>
> I've never expected any compensation, any wages, nor do I even expect to receive any compensation or

> wages for what I do, for what I do for the ministry of God. (Tr. Vol. II, p. 100.)

When Ann Elmore was asked if she expected such benefits as food and shelter, she stated:

> I didn't come in—I had gave up much more comfortable circumstances in the so-called world than I was coming into. But I was willing to do that. I didn't care if I never had another material thing as long as I lived. I wanted to do what was right in the eyes of God. . . . And no one expected any kind of compensation, and the thought is totally vexing to my soul. It would defeat my whole purpose. (Tr. Vol. II, p. 135, 136.)

Mrs. Elmore's "purpose" behind her work was not to receive compensation in any form, but was "to do what was right in the eyes of God".

The third associate to testify as a representative of the other individuals associated with the Foundation was Ed Mick. Mr. Mick made the following remarks regarding the alleged expectation of wages, compensation, or tangible benefits:

> I have never ever had any expectations of compensation nor wages. When I came to this Church, I was dying. You couldn't put a dollar price on anything like that. I owe my life to the gospel and missionary field and the endeavors of spreading the gospel of this church. Nobody owes me anything. I am the one who owes.
>
> Q. You don't expect compensation at this time?
>
> A. I wouldn't even consider it.
>
> Q. Do you expect compensation for some of your activities in the future?
>
> A. Never ever. (Tr. Vol. II, p. 175.)

Though given the opportunity, the Secretary of Labor was unable to produce any associate who would testify that he or she expected wages or compensation in any form for their efforts. In this regard, the Secretary failed to meet his burden of proof. As stated in *Donovan v. William Chemical Company, Inc. d/b/a Dooly Oil*, 682 F. 2d 185 (8th Cir. 1982):

> In determining whether hours are compensable, it is the duty of the court to look to the employment agreement to determine what the parties intended, and where that is impossible, to look to the circumstances to determine what was intended. *Id.* at 187.

The Secretary of Labor, through this action, is attempting to impose an employee-employer relationship upon the associates and the Foundation despite their express intent to the contrary. Is it the purpose of the Secretary of Labor to label all volunteer work "employment" so that work in any form or setting is subject to the Fair Labor Standards Act?

None of the associates[4] claimed that they were entitled to wages in any form as a result of their labor. The Secretary of Labor, however, seeks to force the Foundation to pay wages to individuals who neither expect nor desire the same. As stated by the District Court in its *Memorandum and Order* (App. 7-8), Mrs. Elmore's attitude was "typical of the associates' attitude about the Secretary's efforts in their behalf", and that to Mrs. Elmore, the

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[4]Even with respect to former associates, the Trial Court found that at the time they were at the Foundation they considered themselves volunteers of their services. (*See, Memorandum and Order,* footnote 3, App. 7.)

thought of receiving wages for her work is "vexing to my soul". (Tr. Vol. II, p. 135.)

This Court should also examine the nature of work performed by the representative associates. Mr. Levy, when describing what he did at the Foundation, stated:

> I volunteer my services in whatever capacity I can be of use; I witness and testify; to go to church services; I seek baptisms with souls; I read with young Christians; I go out on the street and bring the gospel of love to people. . . . I go out on witnessing chains and bring the message to the lost and dying in convalescent hospitals and jails, on the street, witnessing and testifying, whatever. In whatever capacity I am, the main thing that I do is witness for the Lord Jesus Christ. (Tr. Vol. II, p. 73.)

Furthermore, Mr. Levy stated he volunteered his services on the Foundation's hog farm. (Tr. Vol. II, p. 77.)

Ann Elmore, in describing her activities with the Foundation, stated:

> Well, my main and sole interest is to preach the gospel to other people who are like I was, that they may have that same thing, that they might be saved. So whatever I do,—the first four and a half or five years at the Foundation, I did nothing but read the Bible and pray. I'd go out in the streets and witness and testify. That was all I did the first five years. (Tr. Vol. II, pp. 127-128.)

Mrs. Elmore also stated: "I volunteered my time waitressing at our restaurant. And I loved working up there, because I was a witness for the Lord." (Tr. Vol. II, pp. 140, 141.)

Ed Mick made the following statements regarding his service for the Foundation:

I witness and testify. I go out on witnessing chains, hospital wards, intensive care wards, to the streets, the highways, the byways, pass out gospel literature, and compel people to come into the house of the Lord.

. . .

I do some other activities if I am needed, or if I see a place where I can volunteer my services, I cheerfully do so.

. . .

Yes, I have on occasions [worked at the restaurant]. I've gone in and fry cooked, wherever I could help out.

Tony Alamo described the character of the individual who is accepted by the Foundation and the purpose behind the individual associate's affiliation with the Foundation, as follows:

> [W]e are not out to get people to come to the Foundation, to feed people. And those that volunteer, that say they really want to serve the Lord with all their heart, soul, and mind and body, that really want to become evangelists, that want to become pastors, that want to give their life to the Lord, then they have to convince us without a shadow of a doubt before we ever take them in. (Tr. Vol. II, p. 204.)

The associates did not desire or expect wages or compensation of any kind. The nature of their work tends only to support their statement that they volunteered their services.

Throughout the District Court's *Memorandum and Order,* the phrase "commercial businesses" is utilized. The District Court appears to focus its concern on those associates who worked in the Foundation's "commercial businesses". In paragraph V, App. 36, of the aforesaid *Memo-*

randum and Order, the Trial Court makes the following conclusions: "The people who worked in the Foundation's commercial businesses . . . are 'employees' of the defendants, Tony Alamo, Susan Alamo and the Foundation within the meaning of the Act." The District Court, however, should not have disregarded the voluntary nature of the associates' work simply because some of them might have worked in activities customarily considered "commercial". In the case of *Walling v. Portland Terminal Company, supra,* this Court found: "There is no question that these trainees do work in the kind of activities covered by the Act." 330 U. S. at 151, 91 L. Ed. at 812. Notwithstanding this finding, this Court held that the trainees were not employees under the Act as they performed services without promise or expectation of compensation.

In the case of *Rogers v. Schenkel, supra,* the United States Circuit Court of Appeals for the Second Circuit found that the plaintiff "performed work in interstate commerce for the defendants" and that "his services were those of a helper doing plating work". *Id.* at 597. The Second Circuit, however, also found that the plaintiff intended his services to be rendered without compensation. Accordingly, and in light of the *Portland Terminal* case, the Second Circuit reversed the District Court's decision and found no basis for the legal conclusion that the plaintiff was an employee under the Fair Labor Standards Act.

Furthermore, in the case of *Turner v. Unification Church, supra,* it was found that the plaintiff "worked long hours—'often more than 12 hours per day' of 'compulsory service' soliciting money and selling such items as candy, flowers, and tickets for Church rallies". *Id.* at

371. For these efforts, the plaintiff received no monetary compensation but was provided with food and shelter. Despite such efforts in activities which could be labeled "commercial", the Court found no employer-employee relationship to exist.

Each of the above-cited cases deal with individuals working in "commercial" activities. Yet, in each case, the Court found the intent and expectations of the parties to be controlling. As stated in *Skidmore v. Swift & Co.*, 323 U. S. 134, 65 S. Ct. 161, 89 L. Ed. 124 (1944): "The law does not impose an arrangement upon the parties. It imposes upon the Courts the task of finding what the arrangement was." 323 U. S. at 137.

The intent and expectation of the associates are clear. As in *Turner*, the associates performed services for charitable purposes, and as in *Portland Terminal* and *Schenkel*, the associates did not contemplate, expect, or desire compensation for the services performed.

The decision of the Eighth Circuit in the case now under review is in direct conflict with this Court's decision rendered in *Walling v. Portland Terminal Co., supra*, with the Second Circuit's decision rendered in *Rogers v. Schenkel, supra*, and with the First Circuit's decision rendered in *Turner v. Unification Church, supra*. It is interesting to note that despite these cases being so similar to the facts of the case at hand and notwithstanding the same being thoroughly argued in the parties' briefs, the Eighth Circuit in its decision made no mention of any of these cases.

2. *Effect of Decision on Volunteerism in this Country and on Religious Freedom.*

This decision of the Court of Appeals for the Eighth Circuit will have serious consequences on volunteerism

in this country. The District Court found (1) that each associate viewed his work as volunteering his services to the Foundation; (2) that typical of the associates' attitude was that the work done for the Foundation was not for material reward, but was in furtherance of their religious beliefs; and (3) that none of the associates expected any compensation. Despite these findings, the District Court, which was affirmed by the Eighth Circuit, found the associates to be "employees" as defined by the Fair Labor Standards Act and imposed the record-keeping, minimum wage, and overtime provisions of the Act upon the associates and the Foundation.

The effect of the decision is devastating to those who wish to *freely* give of their services. This decision ignores the desires of this charitable organization as well as those of the volunteers who consider even the thought of receiving wages for their labor to be "vexing" to their souls. Practically every person in this country volunteers his services in some way. As noted in S. J. Ellis & K. H. Noyes, BY THE PEOPLE, A HISTORY OF AMERICANS AS VOLUNTEERS (1978):

> The few research studies done on the extent of participation in volunteer work have considered only participation in formalized or organized volunteering. For example, the Census Bureau conducted a survey for ACTION, concluding that in the year ending April 1974, a total of 36,812,000 Americans volunteered. This meant that 24% of the population, or one out of every four citizens over the age of 13, did organized volunteer work that year. This was an increase over the figure determined by a Department of Labor study in 1965. However, both of these surveys admitted to touching only the tip of the volunteer iceberg. . . . When one adds to the available statistics the

amount of "informal" or "unaffiliated" volunteering, the numbers soar to include just about everyone. (pp. 227-228)

The Secretary of Labor, through this case, is expressing his position that volunteerism is an encroachment on his "territory". This position is based upon the belief that volunteers handle jobs that someone could be paid to do. He argued that an unfair advantage over competitors would be created in favor of the Foundation and other similar religious and charitable institutions if volunteers are excluded from the provisions of the Fair Labor Standards Act. Though this may occasionally be true, it does not justify imposing the terms of the Fair Labor Standards Act upon volunteers and upon organizations utilizing volunteers. This argument must be rejected in light of *Walling v. Portland Terminal Co., supra.*

Not only is this argument contrary to the holding in *Portland Terminal,* but it has no support in the record as the only evidence comparing the activities of the Foundation with businesses outside the Foundation shows the Foundation's prices to be higher. (Deposition, William J. Baxter, pp. 16, 17.)

Furthermore, the fallacy of this argument can easily be seen when one is forced to consider the church worker who drives the church bus to take the elderly to and from church services to be in competition with the local taxi companies. This argument also forces one to find competition between the local restaurants and the church cafeteria which supplies meals prior to a church service. The Secretary's argument leads to the conclusion that professional fund raisers are placed in an unfair position by

the volunteer who donates his time and effort to solicit pledges for the church budget. The landscaping companies are being deprived of business by the volunteer who freely gives his time and effort to maintain the landscaping around church buildings. Because of this "unfair advantage" or "competition", the Secretary attempts to justify application of the Act to traditionally charitable and religious settings.

In short, the imposition of the aforesaid Act and its regulations upon the Foundation and its activities will quickly lead to the demise of this Christian effort. In addition, it will open the door for the Secretary of Labor to impose such burdensome financial and recordkeeping requirements upon other Christian ministries, which will inevitably hinder and restrain their religious and charitable efforts. It is common knowledge that charitable and religious organizations and their projects or programs exist only because of volunteer help. Furthermore, such programs and projects typically involve activities that could be considered "commercial". Yet, up until this case, such have not been burdened with government regulation through acts such as the Fair Labor Standards Act.

The decisions below will drastically affect the nature and availability of the volunteer work force. In addition, these decisions create serious First Amendment concerns. For example, one inevitable result is the entanglement of heavy government regulation with religious activity. Furthermore, in light of the fact that volunteers for most charitable organizations render services for which other individuals may receive compensation and the fact that the Secretary has applied the Act sparingly (and indeed has apparently refused to apply the Act to particular re-

ligious or charitable groups), one is forced to conclude that the Secretary is guilty of discriminatory application of the Act. The importance and impact of this decision warrant the granting of the petitioners' request for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

CONCLUSION

WHEREFORE, petitioner prays that a Writ of Certiorari issue from this Honorable Court to review the decision of the United States Court of Appeals for the Eighth Circuit in Raymond J. Donovan, Secretary of Labor, United States Department of Labor v. Tony and Susan Alamo Foundation, Tony Alamo, Susan Alamo, and Larry LaRouche. In the event that the Petition is granted, petitioners pray that the decision of the Court below be reversed.

Respectfully submitted

GEAN, GEAN & GEAN
First America Building
Suite 500, 524 Garrison Avenue
Fort Smith, Arkansas 72901

By ROY GEAN, JR.

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

NO. CIV 77-2183

RAYMOND J. DONOVAN, SECRETARY OF LABOR,
UNITED STATES DEPARTMENT OF LABOR

Plaintiff,

vs.

TONY AND SUSAN ALAMO FOUNDATION, ET AL.,

Defendants.

MEMORANDUM AND ORDER

This is a suit by the Secretary of Labor seeking injunctive relief under the Fair Labor Standards Act. The Court has jurisdiction of the case as an action brought pursuant to 29 U.S.C. §217. Following an evidentiary hearing, the Court enters the following findings of fact and conclusions of law:

Findings of Fact

I.

The Tony and Susan Alamo Foundation was incorporated under the laws of California on January 29, 1969. In the Articles of Incorporation, the Foundation purports to be a nonprofit religious corporation with the primary purposes being to: "establish, conduct and maintain an evangelistic church, and generally to do those things needful for the promotion of Christian faith, virtue and charity."

II.

The Foundation secured an exemption from taxation under §501(c)(3) of the Internal Revenue Code as a corporation organized and operated exclusively for religious purposes with none of its net earnings inuring to the benefit of any private shareholder or individual. The exemption has been approved and certified by the Internal Revenue Service.

III.

Since incorporation, the defendant Tony and Susan Alamo Foundation has owned or operated the following businesses in California since at least January 1, 1976:

Period of Time From	To	Business Name	Type of Business	Location
			Contract labor crews	Saugus, CA
		Alamo Sewing Room	Manufacture of clothing	Saugus, CA
		Alamo on Vine	Retail Sales of clothing	Hollywood, CA
10/27/73	5/6/76	Alamo Exxon	Service station	Saugus, CA

IV.

Defendant Tony and Susan Alamo Foundation applied for, and received, a certificate of authority to conduct business affairs in the State of Arkansas. The Foundation has owned or operated the following businesses in Arkansas since April 10, 1975:

Period of Time From	To	Business Name	Type of Business	Location
1/ 5/71	Present	Hartford Advertising	Promotion of records	Alma, AR
6/ 1/71	Present	Alamo Record Co.	Production of records	Alma, AR
4/10/75	Present	Fort Smith Mobile Nursery	Landscaping	Alma, AR
6/15/75	Present	Alamo Shoppers Emporium	Sales of building materials	Alma, AR
7/ 7/75	Present	Alamo Kerr McGee	Service station	Alma, AR
7/29/75	Present	Alamo DX	Service station	Alma, AR
10/21/75	Present	Alamo Restaurant	Restaurant	Alma, AR
2/21/76	Present	Alamo Candy Co.	Production of candy	Alma, AR
		Fleetwood Candies	Distribution of candy	Alma, AR
			Contract labor crews	Alma, AR
		Alamo Petroleum		Alma, AR
		Alamo Sewing Room	Manufacture of clothing	Alma, AR
5/13/76	Present	Alamo of Nashville	Retail sales of clothing	Alma, AR
4/ 2/76	5/30/78	Alamo Bandito	Retail sales of clothing	Alma, AR
7/ 5/76	Present	Alamo Discount Groc.	Retail sales of groceries	Alma, AR
1/ 5/77	Present	Alamo Construction	Construction	Alma, AR

Period of Time From	To	Business Name	Type of Business	Location
3/14/77	Present	Alamo Telegraph	Western Union	Alma, AR
6/ 1/77	Present	Alamo Auto Repair	Vehicle repair	Alma, AR
1/20/78	Present	Southwest Business Management	Recordkeeping	Alma, AR
5/20/78	Present	Alamo Freight	Freight-trucking	Alma, AR
7/ 1/78	Present	Alamo Ready-mix	Ready-mix concrete	Alma, AR
10/20/78	Present	North American Leasing	Leasing	Alma, AR
6/27/79	Present	Alamo Farms	Hog farms	Alma, AR
6/27/69	Present	Bosco Feed	Feed and farm supplies	Alma, AR
9/21/79	Present	Alma Electric	Electrical construction	Alma, AR
9/21/79	Present	Alamo Land Development	Real estate	Alma, AR
9/21/79	Present	Alamo Packing	Packing and storage	Alma, AR
9/21/79	Present	Alamo Plumbing	Plumbing	Alma, AR
9/21/79	Present	Alamo Quarries	Sand and gravel	Alma, AR
9/21/79	Present	Alamo Roofing	Roofing construction	Alma, AR

V.

The defendant, Tony and Susan Alamo Foundation, has owned or operated the following businesses in the State of Tennessee since September 1, 1974:

Period of Time From	To	Business Name	Type of Business	Location
9/ 1/74	Present	Alamo of Nashville	Retail sales of clothing	Nashville, T
10/15/74	Present	Nashville Today	Distribution of candy	Nashville, T
10/15/74	Present	Tennessee Boy	Distribution	Nashville, T

VI.

The Foundation has owned or operated the Tempe Towers Motel in Tempe, Arizona, since March 15, 1979.

VII.

The businesses owned or operated by the Foundation are ordinary commercial businesses which offer goods and services to the general public in competition with for-profit businesses. The workers in the businesses are engaged in interstate commerce or in the production of goods for interstate commerce, or are workers handling, selling or otherwise working on goods or materials which have been moved in or produced for interstate commerce. Since January 1, 1976, the Foundation has had an annual gross volume of sales made or business done of not less than $250,000, exclusive of excise taxes at the retail level which are stated separately.

VIII.

Defendant, Tony Alamo, is a resident of Crawford County, Arkansas. He is President of the Foundation and he actively supervises and directs the affairs and operations of the Foundation. Since the incorporation of

the Foundation, Tony Alamo has acted directly or indirectly in the interests of the Foundation in relation to its employees and workers. Defendant, Susan Alamo, was a resident of Crawford County, Arkansas, until her death in April, 1982. She was Secretary and Treasurer of the Foundation and, at relevant times, she acted directly or indirectly in the interests of the Foundation in relation to its employees and workers.

IX.

At the commencement of this action in December, 1977, defendant Larry La Roche was a resident of Crawford County, Arkansas, and Vice President of the Foundation. He no longer holds that office. There is no substantial evidence that Mr. La Roche acted directly or indirectly in the interests of the Foundation in relation to its employees or workers in the Foundation's commercial businesses.

X.

The Foundation is an outgrowth of the evangelistic efforts of Tony and Susan Alamo. The affidavits[1] of the "associates"[2] of the Foundation provide persuasive evidence that the evangelistic work of the Alamos and/or the Foundation associates has provided spiritual and

1. Defendants filed affidavits of 155 people who, if called as witnesses by defendants, would have testified in accordance with their affidavits. The parties agreed that the affidavits could be accepted in lieu of oral testimony since most of the testimony is cumulative.

2. The term "associates" of the Foundation is the way most of the workers described their relationship with the Foundation.

moral assistance to many people who lacked direction or purpose in their lives and some who were addicted to drugs or engaged in criminal activity.

Practically all of the work performed in the operations of the commercial businesses owned or run by the Foundation is done by the associates under the direction or supervision of Tony Alamo and, until April, 1982, Susan Alamo. The associates apparently own no interest in the Foundation and their relationship to the Foundation is an informal one.

The associates are entirely dependent upon the Foundation for long periods, in some cases several years. The associates who worked in each of the Foundation's businesses were not considered by defendants to be employees, but rather were considered as volunteers, associates of the Foundation, or brothers and sisters of the congregation. These workers received room, board, medical care, clothing, furnishings, child care and small amounts of cash money from the Foundation.

The Secretary failed to produce any past or present associate of the Foundation who viewed his work in the Foundation's various commercial businesses as anything other than "volunteering" his services to the Foundation.[3] Typical of the associates' attitude about the Secretary's efforts in their behalf is that of Ann Elmore. Mrs. Elmore testified convincingly that she considered her work in the Foundation's businesses as part of her ministry.

3. Some of the witnesses who testified by deposition were former associates who had become disillusioned with the Foundation and Tony Alamo. Nevertheless, at the time they were at the Foundation and working in its businesses, they considered themselves "volunteers" of their services.

She views the businesses as a vehicle for preaching, witnessing and testifying in support of religious beliefs of those associated with the Foundation. She does not work for the Foundation for material rewards; she does it in furtherance of God's command to spread the gospel. Mrs. Elmore said that she never expected any compensation from the Foundation and the thought of receiving wages for her work is "vexing to my soul."

Although the assocates expected no compensation in the form of ordinary wages, they did expect the Foundation to provide them food, shelter, clothing, transportation and medical benefits. Several former associates apparently had the idea that if the Foundation's businesses were successful, they would all prosper.

XI.

The Foundation does not solicit contributions from the public. Its principal sources of income are from the operation of its commercial businesses and donations from its associates. A substantial number of associates work in the various businesses. Some associates work for "outside employers" at various times and turn their paychecks over to the Foundation. Others contract for various jobs, such as construction work, and turn the contract proceeds over to the Foundation. Some of the associates work at non-commercial jobs for the Foundation, such as cooks, nursery school attendants, school-teachers, etc., at the Foundation school.

The Foundation maintains no records of the hours worked by associates in its commercial businesses. The records which were "reconstructed" for this litigation do not accurately reflect the hours worked or jobs performed by the associates and are of no benefit to the Court.

The Secretary has taken the position that an appropriate inference to be drawn from the evidence, in the absence of accurate records, is that all 300 associates worked 10 hours per day, 6 days per week. The figures of 10 hours per day, 6 days per week were elicited from former associates in response to leading questions on depositions. Some of the Secretary's witnesses, who were former associates of the Foundation, testified that work assignments were prepared for the associates and they were required to work as long as 12 to 15 hours per day, 6 or 7 days per week. One witness, Debra Malone, said she worked as long as 3 or 4 days at a time in the sewing room without sleep. In opposition to such testimony, defendants' witnesses testified there was no "scheduling" or "assignment" of work at the commercial businesses; that people just volunteered to work when they saw a need.

It is difficult to draw inferences with any degree of certainty, from the testimony presented, as to the number of associates working in commercial businesses or the hours they worked. First, there is no basis for concluding, as the Secretary suggests, that all 300 of the associates worked in the Foundation's commercial businesses. To the contrary, the evidence reflects that the associates have constructed, decorated and furnished a number of residences, an apartment building, a church, and various other structures used by the Foundation and its associates for non-commercial purposes. The labor for much of this construction and the continuing maintenance of the structures was furnished by the associates. As

previously mentioned, some associates work at the Foundation in non-commercial jobs, such as babysitting at the nursery, cooking for the other associates, etc. Furthermore, the Foundation produces a television show which obviously requires some non-commercial work time; some associates "witness" on the streets, in hospitals, jails and other places; and some help organize new churches. Additionally, some associates are employees of businesses other than the Foundation's and simply turn their paychecks over to the Foundation. In any event, while it is difficult to reach any reasonably accurate conclusion as to how many associates work in the commercial businesses at any particular time, it is not reasonable to conclude that all of the adult associates are working in the commercial businesses, or, that the ones who do work in the commercial businesses do so on the regular basis suggested by the Secretary.

Value of Benefits Furnished Associates

As previously mentioned, most of the associates of the Foundation are totally dependent upon the Foundation. This dependence extends, in some instances, for a period of years. In many respects, the Foundation is operated as a commune.

The defendants contend that if the associates are "employees" and thereby entitled to wages under the Act, the defendants should receive credit for the reasonable cost of benefits furnished the associates. See, 29 U.S.C.S. § 203(m).

The burden of establishing the "reasonable cost" of such benefits rests upon the defendants. As stated in

Donovan v. Williams Chemical Co., Inc., et al., No. 81-1999 at 8, (8th Cir. 1982).

> "Section 3(m) of the Act, 29 U.S.C. § 203(m), allows employers to include the reasonable cost of providing meals, lodging, or other facilities in employee wages for purposes of the Act. The regulations promulgated by the Secretary define 'reasonable cost' 'to be not more than the actual cost to the employer of the board, lodging, or other facilities customarily furnished by him to his employees.' 29 C.F.R. § 531.3(a). '"Reasonable cost" does not include a profit to the employer or to any affiliated person.' *Id.* § 531.3(b). The regulations require employees to keep certain records of the cost incurred in furnishing board, lodging or other facilities, *id.* § 516.27(a), and also require the employer to maintain records showing additions or deductions from wages paid for board, lodging or other facilities on a work week basis. *Id.* § 516.28(b)."

The employer who claims a credit for the reasonable cost of providing board, lodging, or other facilities has the burden of segregating the permissible deductions from wages and impermissible deductions, *i.e.*, the reasonable costs of meals, lodging, or other facilities from the total cost plus profit of providing them. *Donovan v. New Floridian Hotel, Inc.*, 676 F. 2d 468, (11th Cir. 1982) and cases cited therein. The specific guidelines for determining cost of food, lodging and other facilities are contained in Title 29 C.F.R. § 531.3. The guidelines will not be quoted in full, but the Court acknowledges and applies those guidelines in this case.

Defendants presented records purporting to show the actual cost of providing food, lodging and other facilities for the associates from 1976 through 1981. Obviously, the books were not maintained with a view toward "segregating the cost" of benefits provided the associates.

There is a sufficient basis, however, for drawing reasonable inferences as to the actual costs. The books and records of the Foundation were subject to an extensive audit by the Secretary's investigators. Predictably, and consistent with the entire course of this litigation, the conclusions recommended by each side are poles apart. Defendants' exhibits 34-A and 34-B are representative of the contrast.

OVERALL BENEFITS RECEIVED PER MONTH PER ASSOCIATE ACCORDING TO RECORDS OF THE TONY AND SUSAN ALAMO FOUNDATION

(Defendants' Exhibit 34-A)

	1976	1977	1978	1979	1980	1981
BOARD	133.31	158.27	185.37	192.79	176.89	218.84
LODGING	451.74	413.23	448.21	433.47	426.54	463.25
TRANSPORTATION	106.80	93.36	97.08	110.60	129.53	145.83
CLOTHING	38.16	77.93	84.12	84.27	87.97	88.68
MEDICAL	6.27	13.18	8.69	8.20	8.56	11.37
UTILITIES	22.89	21.26	20.88	22.47	29.81	35.01
OTHER	134.93	105.73	122.03	147.43	136.00	163.80
RECREATION	.00	.00	7.30	7.41	12.58	13.50
TOTAL	894.10	882.96	973.68	1,006.64	1,007.83	1,140.28

OVERALL BENEFITS RECEIVED PER MONTH PER ASSOCIATE ACCORDING TO DEPARTMENT OF LABOR

(Defendants' Exhibit 34-B)

	1976	1977	1978	1979	1980	1981
BOARD	12.05	41.27	50.52	48.62	41.01	57.31
LODGING	38.82	43.81	56.84	59.45	69.49	78.92
TRANSPORTATION	.00	.00	.00	.00	.00	.00
CLOTHING	6.15	9.01	8.17	7.55	10.26	4.58
MEDICAL	6.27	13.18	8.69	8.20	8.56	11.37
UTILITIES	10.15	6.61	7.32	6.39	4.89	5.03
OTHER	16.90	11.18	27.69	39.44	31.66	23.94
RECREATION	.00	.00	.00	.00	.00	.00
TOTAL	90.34	124.43	159.23	169.65	165.89	181.15

While evaluating the benefits, the Court is mindful of the dispute existing between the parties regarding the quality of food, lodging and other facilities. Defendants characterize the benefits as those of the highest quality and plaintiff argues for the opposite extreme. The Court concludes the truth lies well within either extreme claimed. The photos and reliable descriptions of the housing suggest it is fairly typical of the average rental property available in the area. Some of the housing appears to be in excellent condition and well furnished, while other property is poorly maintained and ill furnished. The associates who appeared at trial certainly appeared healthy, well nourished and well clothed and there is no reason to believe the others are not.

In evaluating the benefits furnished the associates, the Secretary took issue with the purchase price and depreciation schedule figures used by defendants as representative of the defendants' "cost" of providing lodging. The Secretary concluded that fair rental value of the property used as housing was a more appropriate measurement, particularly with respect to the Arkansas properties. Accordingly, the Secretary hired a real estate appraiser for the purpose of determining a fair rental value of the properties. The defendants, although urging acceptance of the alleged cost price-depreciation method, did likewise. The Court concludes the rental value method suggested by the Secretary is the appropriate measurement for the Arkansas properties.

As a matter of explanation, the term "donated", which appears on the board schedules, generally refers to food furnished by the Foundation's restaurant, its food market or its distribution center. It is not always free food to

the Foundation. Similarly, references to "donated" on the transportation schedule refers to gasoline, repairs and maintenance of Foundation vehicles furnished by service stations or repair shops operated by the Foundation. There are, however, categories of "food donated" for some years where the food was apparently a gift from third parties. The distinction is noted in footnotes to the benefits schedules.

Benefits — 1976

In 1976, there was an average of 316 adult associates, according to Foundation records.

Plaintiffs' exhibit 49 is a schedule of benefits for 1976 which contains the cost value of benefits according to defendants. The amounts in each category accepted by the Secretary are indicated in red ink.

With respect to each category, the Court reaches the following general conclusions which also form the guidelines for the analysis of the benfits scheduled for subsequent years:

(1)Board—The figures claimed by defendant for Arkansas "Food Donated" from the restaurant are menu or related prices which should be reduced by 35% to more nearly reflect defendants' actual cost. The L.A. "food donated" is reduced by 20%. The Secretary's total disallowance of those figures was not satisfactorily explained. According to the Secretary, each associate was fed for $2.78 per week. That amount does not include children, which reduces the figure below $2 per week. Obviously, the Secretary's suggestion is in error or, at least, is not acceptable to the Court.

With respect to the "Food donated" items in the 1976 schedule, as well as the schedules for subsequent

years, the Court allowed 80% of grocery store donations, and 65% of restaurant donations since these figures were supported by persuasive evidence as the "cost" figures to the Foundation. The Court allowed 10% of the food donated from third parties as the cost of transporting, preparing and serving the food. The Foundation maintained a cafeteria which was operated at some "cost" to the Foundation.

(2)Lodging—The lodging figures are based upon the average fair rental value of the living quarters furnished the associates in Arkansas by the Foundation. The rental value is figured on the basis of furnished units. Also, such items as property tax, insurance, maintenance and repairs, etc., are included in the rental value. The figures are calculated so as to avoid duplication. For example, if utility costs are allowed elsewhere, they are not included in the rental value.

There is persuasive evidence that a portion of the Tempe property is used for living quarters full time by at least two associates and that other associates stay there periodically when traveling between Los Angeles and Alma. An allowance of 10% of the depreciated value of the Tempe property is made for that benefit furnished by the Foundation.

With respect to the California and Nashville property, the Court adopts the figures used by Mr. Gahm, the Secretary's auditor.

(3)Transportation—The Secretary refused to allaw any sum for transportation despite convincing evidence that all of the transportation used by the associates was furnished by the Foundation. There is uncontradicted testimony that associates were transported to and from jobs, provided airplane tickets, taken for medical treatment, etc., all in Foundation vehicles or at Foundation expense. The Secretary's apparent objection to defendants' figures arises because the defendants included all vehicles, commercial or otherwise, in its transportation figures. The Sec-

retary's witness contended that "very few" of the Foundation's vehicles were appropriate for passenger use. The Court has examined the schedule of vehicles and equipment and concludes that approximately 50% of the vehicles are passenger type vehicles. Accordingly, the Court allows 50% of the documented expenses as transportation costs.

(4)Clothing—The defendants furnished evidence of the value of clothing furnished the associates. The Secretary objected to the value of the Arkansas and Nashville clothing, citing as one reason for the objection the fact that retail prices of clothing donated from the Foundation's stores were used and that the figures should be reduced by the 50% markup over actual costs. The Court agrees that the figures for clothing, which are not actual purchase prices, should be reduced. There is no evidence, however, which explains why the Secretary substituted figures for the Arkansas and Nashville amounts and, therefore, the Court accepts the Foundation's figures reduced by 50%.

(5)Medical—figures are documented amounts actually expended.

(6)Utilities—The Arkansas utility costs have been included in the cost of lodging. The remaining utility claims are actual figures. In some instances, the Secretary refused to allow the full amounts expended but there is no explanation for the reduction.

(7)Other—Much of the "Other" category claimed by the Foundation is duplicative of the rental value of lodging. Some of the categories, such as "legal", "Livestock supplies", "Office expenses, supplies", etc. appear to relate to Foundation activities and are not the type "benefit" contemplated by 28 U.S.C. §203(m). Since the defendants have the burden of establishing the cost to them of benefits furnished associates, the figures allowed by the Secretary are generally accepted by the Court.

The Court concludes the defendants established by a preponderance of the evidence an average cost/benefit for each associate in accordance with the following schedule:

1976

Benefit Schedule

	Ark.Food Donated	Ark.Food Purchased	L.A.Food Donated	L.A.Food Purchased	Nashville Food Purchased		Average Per Mo. Per Associate
Board	116,085.45[1]	6,948.82	224,983.63[2]	29,661.30	9,095.00		102.00
	Ark. Prop.	L.A. Prop.	Nashville	Tempe			
	120,600	42,213.28	8,402.95	1,666.66			45.53
	Ark. Purchased	Ark. Donated	L.A. Purchased	L.A. Donated	Nashville Purchased	Taxes and Insurance	
Transp.	1,810.45	11,260.25	36,293.75	6,716.34	1,455.00	5,820.68	16.71
	Ark.	L.A.	Nashville				
Clothing	60,007.43	18,267.09	3,218.83				21.49
	Ark.	L.A.	Nashville				
Medical	12,415.51	10,957.27	391.05				6.27
	Ark.	L.A.	Nashville				
Utilities		39,805.02	10,496.83				13.27
	Ark.	L.A.	Nashville				
Other	74,716.18[3]						19.70
TOTAL AVERAGE BENEFITS PER MONTH PER ASSOCIATE ----------							$225.03

1. Allowed 65% of Arkansas food donated since there is no evidence it came from any source other than the restaurant.

2. Allowed 80% of L.A. food donated.

3. Allowed "Travel Expense" from other worksheet in addition to Secretary's figures.

Benefits — 1977

In 1977, there was an average of 385 adult associates of the Foundation. The following schedule of benefits was established by a preponderance of the evidence.

1977

Benefit Schedule

(Plaintiff's Exhibit 50)

		Ark.Food Donated	Ark.Food Donated	Ark.Food Purchased	L.A.Food Purchased	L.A.Food Donated	Nashville Food Purchased	Average Per Mo. Per Associate
Board	(Rest.)	248,255.00[1]	17,000.00[3]	9,135.43	2,778.78	11,490.00[3]	15,555.72	72.60
	(Groc.)	31,206.80[2]						
		Ark.	L.A.	Nashville	Tempe			
Lodging		173,562.50	42,213.28	16,805.95	1,666.66			50.70
		Ark. Purchased	Ark. Donated	L.A. Purchased	Nashville Purchased	Autos and Trucks		
Transp.		4,621.20	26,356.72	4,063.89	4,892.08	-		8.64
		Nashville Donations	Ark. Donations	L.A. Purchased	Ark.& Nashville Purchased			
Clothing		3,000.00	11,965.96	27,162.17	2,513.50			9.66
		Ark.	L.A.	Nashville				
Medical		35,675.74	24,890.13	306.88				13.18
		Ark.	L.A.	Nashville				
Utilities		-	27,523.96	3,000.00				6.61
		Ark.	L.A.	Nashville				
Other		58,550.55[4]	-	-				12.67
TOTAL AVERAGE BENEFITS PER MONTH PER ASSOCIATE								$174.06

1. 65% of Restaurant Food Donated
2. 80% of Grocery Store Food Donated
3. 10% of Other Food Donated - Cost of cafeteria, transportation and food preparation.
4. Allowed "L.A. maintenance and repair" in addition to amount allowed by Secretary.

Benefits — 1978

In 1978, there was an average of 355 adult associates at the Foundation. The following schedule of benefits was established by a preponderance of the evidence.

1976

Benefit Schedule

(Plaintiff's Exhibit 51)

		Ark.Food Donated	Ark.Food Donated	Ark.Food Purchased	L.A.Food Purchased	L.A.Food Donated	Nashville Food Purchased	Average Per Mo Per Associate
Board	(Rest.)	202,603.95[1]	16,917.00[3]	5,651.91	15,345.30	16,889.50[3]	15,009.29	83.46
	(Groc.)	83,119.57[2]						

	Ark.	L.A.	Nashville	Tempe		
Lodging	220,050.00	42,213.28	16,805.95	1,666.66		65.90

	Ark. Purchased	Ark. Donated	L.A. Purchased	Nashville Purchased	Autos and Trucks	
Transp.	2,117.54	48,423.90	15,221.80	1,876.03	-	15.88

	Nashville Donations	Ark. Donations	L.A. Purchased	Ark.& Nashville Purchased	
Clothing	29,126.10	17,300.14	5,346.38	12,173.81	15.01

	Ark.	L.A.	Nashville	
Medical	31,672.58	5,345.97	2.40	8.69

	Ark.	L.A.	Nashville	
Utilities	-	27,688.63	3,500.00	7.32

	Ark.	L.A.	Nashville	
Other	123,721.16[4]	-	-	29.04

TOTAL AVERAGE BENEFITS PER MONTH PER ASSOCIATE ---------- $225.30

1. 65% of restaurant food donated.
2. 80% of grovery food donated.
3. 10% of other food donated - cost of cafeteria, transportation and food preparation.
4. Allowed "L.A. maintenance and repair" in addition to amount allowed by Secretary.

Benefits — 1979

In 1979, there was an average of 347 adult associates at the Foundation. The following benefit schedule was established by a preponderance of the evidence.

1979

Benefits Schedule

(Plaintiff's Exhibit 52)

		Ark.Food Donated	Ark.Food Donated	Ark.Food Purchased	L.A.Food Purchased	L.A.Food Donated	Nashville Food Purchased	Average Per Mo. Per Associate
Board	(Rest.)	183,214.85[1]	21,716.70[3]	8,168.40	18,115.50[3]	7,653.56	12,828.16	78.50
	(Groc.)	75,165.07[2]						
		Ark.	**L.A.**	**Nashville**	**Tempe**			
Lodging		235,637.50	42,213.28	16,805.95	1,666.66			71.16
		Ark. Purchased	**Ark. Donated**	**L.A. Purchased**	**Tempe Purchased**	**Nashville Purchased**	**Autos and Trucks**	
Transp.		6,268.97	44,452.06	37,566.45	465.82	2,614.93	-	21.94
		Nashville Donations	**Ark. Donations**	**L.A. Purchased**	**Ark.& Nashville Purchased**			
Clothing		2,600.13	13,865.35	2,491.82	15,065.77			8.17
		Ark.	**L.A.**	**Nashville**				
Medical		27,483.77	6,217.67	431.14				8.20
		Ark.	**L.A.**	**Nashville**	**Tempe**			
Utilities		-	25,059.26	6,300.00	536.08			7.66
		Ark.	**L.A.**	**Nashville**	**Tempe**			
Other		187,267.71[4]	-	-	-			44.97
TOTAL AVERAGE BENEFITS PER MONTH PER ASSOCIATE ----------								$240.60

1. 65% of restaurant food donated.
2. 80% of grocery food donated.
3. 10% allowed on other food donated as cost of cafeteria, transportation and food preparation.
4. Allowed "L.A. maintenance and repair" in addition to amounts allowed by Secretary.

Benefits — 1980

In 1980, there was an average of 337 adult associates at the Foundation. The following benefit schedule was established by a preponderance of the evidence.

1980

Benefits Schedule

(Plaintiff's Exhibit 53)

	Ark.Food Donated	Ark.Food Donated	Ark.Food Purchased	L.A.Food Donated	L.A.Food Purchased	Nashville Food Purchased	SWBM Food Donated	SWBM Food Purchased	Avg.Per Mo. Per Assoc.
Board	195,019.50[1]	25,420.12[2]	5,978.69	98,814.00[2]	2,534.96	11,874.23	7.415.31	34,622.79	94.36
	Ark.	L.A.	Nashville	Tempe					
Lodging	276,750.00	42,213.28	17,399.77	1,666.66					83.59
	Ark. Purchased	Ark. Donated	L.A. Purchased	Tempe Purchased	Nashville Purchased	SWBM Purchased	SWBM Donated		
Transp.	517.24	47,448.94	30,394.54	802.64[3]	4,687.76	24,979.82	14,327.12		30.45
	Nashville Donated	Ark. Donated	L.A. Purchased	Ark.& Nashv. Purchased	SWBM				
Clothing	3,577.19	6,690.86	2,310.72	33,059.47	2,294.68				11.85
	Ark.	L.A.	Nashville	SWBM					
Medical	31,769.97	1,639.16	704.11	500.00					8.56
	Ark.	L.A.	Nashville	SWBM	Tempe				
Utilities	-	19,891.37	7,075.48	3,294.17	329.04[4]				7.56
	Ark.	L.A.	Nashville	SWBM	Tempe				
Other	135,675.07[5]								33.55
TOTAL BENEFITS PER MONTH PER ASSOCIATE									$269.92

1. Allowed 65% of restaurant food donated.
2. Allowed 10% of other food donated as cost of cafeteria, transportation and preparation.
3. Allowed all Tempe transportation.
4. Allowed 10% Tempe utilities.
5. Allowed "L.A. maintenance and repair" in addition to amounts allowed by Secretary.

Benefits — 1981

In 1981, there was an average of 314 adult associates at the Foundation. The following schedule of benefits was established by a preponderance of the evidence.

1981

Benefits Schedule

(Plaintiff's Exhibit 54)

	Ark.Food Donated	Ark.Food Donated	Ark.Food Purchased	L.A.Food Donated	L.A.Food Purchased	Nashv.Food Donated	Nashv.Food Purchased	SWBM Food Purchased	SWBM Food Donated	56 Farm	Avg.Per Ho-Assoc
Board(Rest)	182,048.75[1/2]	20,347.13[3]	7,689.73	17,400.00[3]	1,918.90	10,186.46[3]	4,583.65	23,512.49	11,008.51	402.00	93.17
(Groc)	71,968.00[2]										

	Ark.	L.A.	Nashville	Tempe							
Lodging	289,050.00	42,213.28	23,931.78	1,666.66							94.71

	Ark. Purchased	Ark. Donated	L.A. Purchased	Tempe Purchased	Nashville Purchased	SWBM Purchased	SWBM Donated	Autos and Trucks			
Transp.	2,128.26	52,940.27	29,223.07	686.00[4]	2,706.82	37,843.50	10,434.71	-			36.08

	Nashville Donated	Ark. Donated	L.A. Purchased	Ark. Purchased	Nashville Purchased	SWBM					
Clothing	3,036.31	10,420.21	841.52	2,614.87	127,030.40	3,371.84					39.10

	Ark.	L.A.	Nashville	SWBM							
Medical	38,879.62	2,331.87	442.60	1,197.14							11.37

	Ark.	L.A.	Nashville	Tempe	SWBM						
Utilities	-	13,219.37	8,511.99	429.63[5]	8,017.62						8.81

	Ark.	L.A.	Nashville	Tempe	SWBM						
Other	90,201.28										23.94

TOTAL AVERAGE BENEFITS PER MONTH PER ASSOCIATE $306.38

1. Allowed 65% of restaurant food donated.
2. Allowed 80% of grocery food donated.
3. Allowed 10% of other food donated as cost of cafeteria, transportation and preparation.
4. Allowed all Tempe transportation.
5. Allowed 10% utilities at Tempe.

Outside Workers

The Secretary asserts claims in behalf of certain "outside employees"[4] for overtime payments. The claims are made pursuant to Section 7(a) of the Act, which requires overtime compensation of one and one-half times the employee's regular rate of pay for all hours of work in excess of 40 hours during the workweek.

The Secretary's source of information upon which the claims are asserted consists of interviews of some of the employees, review of the payroll records (Px 4), computations of the Secretary's investigator, Rollin Shell (Px 18), and a summary of the computations (Px 19). Additionally, six of the fifteen employees for whom claims are asserted testified at trial.

None of the employees who testified made any affirmative claim for overtime payments. To the contrary, some of the witnesses stated that they had been paid all they were due and were not seeking additional pay.

Most of the claims for overtime pay result from Tony Alamo's penchant for paying the outside employees on the basis of a weekly salary. Although all of the weekly salaries were far in excess of the minimum wage rate, the employees generally worked more than a forty hour week. Any conclusions regarding entitlement of the employees to overtime pay requires the indulgence of inferences from sketchy information. Very frankly, the Court approaches this portion of the claim with little enthusiasm for several

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4 "Outside workers" is the term applied to employees who work in the Foundation's commercial businesses who are not associates of the Foundation.

reasons. The Secretary's proof has little convincing force, particularly for those claims which were not supported by the testimony of the involved employee. At trial, the Secretary inexplicably doubled the amounts which had previously been claimed as overtime due. At least one claim, that for John Shasteen, was forcefully asserted by the Secretary until Mr. Shasteen testified at trial and the claim was withdrawn because of his testimony. Finally, the Court has the distinct impression that the employees who testified thought they were fairly treated and wanted no part of the claims.

In any event, the assertions of the Secretary demand some review and the Court reaches the following conclusions with respect to these individual claims:

1. John Brandon—He worked at the Alamo Transmission Shop for three different periods of time between October, 1978, and September, 1980. His hours were "about 7:30 or 8:00 a.m. until 5 p.m. with an hour off for lunch." His hours were kept "on the honor system"; he was free to leave the job if he needed to; and he thinks he "probably" worked "a little" more than 40 hours per week sometimes. He says he was paid "straight time" for all hours; that he was paid for every hour he worked; and "they don't owe me any money."

In reviewing the payroll ledger attached to Px 4, the Court concludes that Px 18 is an accurate summary of the hours worked per week and overtime due Mr. Brandon. The total pay divided by the hourly rate which Brandon was paid each week reveals the hours worked per week. The pay records used by defendant to compensate Brandon are a more reliable method for determining the hours he worked in 1978, 1979 and 1980 than his recollection at trial. Applying Section 7(a) to the figures produced by the payroll ledger dictates the conclusion that John Brandon is entitled

to $815.69 as overtime pay improperly withheld by the defendant.

2. Dennis Cravens—Mr. Cravens did not testify at trial. The payroll ledger sheets indicate that Mr. Cravens was paid a weekly salary which was comfortably in excess of the minimum wage. The Secretary contends that occasionally Mr. Cravens drew more than his weekly salary and the Court should conclude that the excess payments were for overtime hours, which were paid at the regular hourly rate. After reviewing the ledger sheet, the Court concludes that the bare information provided is not a sufficient basis for reaching a "just and reasonable inference" that Cravens is entitled to overtime pay under Section 7(a).

3. Ronald Dickenson—Mr. Dickenson did not testify. The records alone are not sufficient to support a "just and reasonable inference" that he is entitled to overtime pay under Section 7(a).

4. Howard Floyd—Mr. Floyd was employed as an equipment operator at an hourly rate of $8 per hour. He made an average of $430 per week. The usual workweek was 60 hours per week. He was paid time and a half for all hours over 48 hours, but not for the hours between 40 and 48. He thinks he lost $32 per week by missing overtime for the hours between 40 and 48. He said Alamo "paid me good" and he didn't know what the overtime law provided and "didn't care".

The matter of overtime due Mr. Floyd under Section 7(a) is based upon simple calculations from Px 4. The summary prepared by Rollin Shell as Px 18 is accurate. Defendant improperly withheld $2,135.00 in overtime pay from Mr. Floyd.

5. Oscar Gamez—Mr. Gamez did not testify. The payroll ledger indicates that he was paid a weekly salary of $240 per week for a 60 hour week. When he worked less than 60 hours, which is, of course, a frequent occurrence in the construction busness, hs pay was reduced at the rate of $4 per hour. The Sec-

retary argues that Mr. Gamez's regular rate of pay is $4 per hour and that he is entitled to time and a half for all over 40 hours. If Sections 778.108, 778.109 and 778.114 of the Interpretative Bulletin of the Code of Federal Regulations for Title 29, Part 778 are applied to Mr. Gamez's situation, he is, indeed, entitled to overtime compensation. The payroll ledger supports the calculations of Rollin Shell contained in Px 18. Defendant has improperly withheld overtme pay under Section 7(a) in the amount of $2,592.00 due Mr. Gamez.

6. Alfred Lampkin—Mr. Lampkin's situation is identical to that of Howard Floyd. Mr. Lampkin is due overtime pay in the amount of $1,946, which has been improperly withheld under Section 7(a) of the Act.

7. Curtis Lloyd—Mr. Lloyd's payroll ledger records indicate that he was paid the same hourly rate for all hours worked. For example, the ledger reflects that for the week ending August 10, 1979, he worked 66½ hours, his regular rate of pay was $11 per hour, and he was paid a total of $731.50. He is entitled to time and a half for all hours over 40 hours in any week. The total pay improperly denied him is $2,121.01.

8. A. L. McElroy—Mr. McElroy did not testify. He was paid a weekly salary of $250. The Secretary assumes he worked a 45 hour week. The Court cannot find any substantial evidence in the record which will warrant such a conclusion. There is no evidentiary basis which will support a "just and reasonable inference" that Mr. McElroy was improperly denied overtime payments mandated by Section 7(a).

9. Dennis Meyers—The payroll ledger indicates that Mr. Meyers was paid a straight hourly wage for all hours over 40 per week. The Court concludes the calculations in Px 18 are correct and he was improperly denied $495.26 in overtime pay under Section 7(a).

10. C. H. Osborn—The payroll ledger indicates that Mr. Osborn was paid $3.77 per hour for all the hours

he worked each week. His ledger entries contain the entry "contract labor". The significance of the entry is not explained by evidence. In any event, the calculations contaned in Px 18 are correct. Mr. Osborn was improperly denied $1,145.98 in overtime pay under Section 7(a).

11. Ivan Pense—Mr. Pense's situation is almost identical to that of John Brandon. He was equivocal in his testmony about the number of hours worked each week. The hours reflected in defendants' payroll ledger is the most persuasive evidence on this issue. Overtime pay in the total sum of $2,654.92 was improperly withheld from Mr. Pense.

12. Sherill Rich—The payroll ledger indicates that Mr. Rich was paid $8 an hour for all hours worked. For example, the week ending August 23, 1979, he worked 60½ hours and was paid $484.00. Pursuant to the provisions of Section 7(a), he is entitled to $182.00 in overtime pay which was improperly withheld.

13. Roy Van Kleer—The Court cannot locate any records in the exhibits which provide the underlying data for the claim asserted in behalf of Mr. Van Kleer. No testimony was produced at trial which would provide a basis for a "just and reasonable inference" that he is entitled to additional pay for uncompensated overtime work.

14. A. Z. Hudson—Mr. Hudson was supervisor of Alamo's construction company with power to hire and fire employees. He was paid a weekly salary of $650. Because there was a reducton of his salary when he failed to work a full week, as is frequently the case in construction work, the Secretary takes the position that Mr. Hudson should be considered an hourly employee who was compensated at the rate of $10 per hour and is, thereby, entitled to overtime payments totaling $7,070.49. Mr. Shell, the Secretary's auditor, testified that, "You have to study each one (case)" to determine whether an employee should be exempt for purposes of overtime pay when he is compensated on

a salary basis. Mr. Hudson clearly agreed to payment on a salary basis, he was satsfied with the basis of pay he received, and he is asserting no claim for additional benefits. The Court does not believe it would be appropriate to treat him other than as the supervisory salaried employee he was for overtime purposes.

15. John Shasteen—The Court stated its conclusions from the bench regarding the claim in behalf of Mr. Shasteen. He was a salaried employee and there is no basis in the evidence for concluding that he is entitled to overtime pay.

16. Bill Richards—Mr. Richards was paid a weekly salary according to the payroll ledger. There is no persuasive evidence as to the number of hours he worked each week. There is no basis in the evidence for a "just and reasonable inference" that he was improperly denied overtime pay.

17. Doris Bradley—The Court can find no basis in the exhibits for concluding that Ms. Bradley was improperly denied overtime pay.

18. Don Hanks—The payroll ledger indicates Mr. Hanks was paid a weekly salary. There is no evidence in the exhibits or testimony that he worked in excess of 40 hours per week. Furthermore, there is no evidence which would support a "just and reasonable inference" that he was improperly denied overtime pay.

Conclusions of Law

I.

The Court has jurisdiction of this case as an action brought in equity pursuant to 29 U.S.C. §217.

II.

Defendants' contention that the action should be dismissed since no alleged employees are parties, nor are

any named in the complaint as required by 29 U.S.C. §216, is misplaced. An action pursuant to 29 U.S.C. §217 is separate and independent from an action under §216. *Hodgson v. Katz & Besthoff, No. 38 Inc.*, 365 F.Supp. 1193 (W.D. La. 1973). Furthermore, defendant's contention that the action is barred by the statute of limitations because the names of employees for whom benefits were sought were not identified until the time of trial is without merit. An action is commenced for purposes of relief under §217 when the complaint is filed. *Wirtz v. Novinger's Inc.*, 261 F.Supp. 698 (M.D. Pa. 1966).

III.

The businesses identified in Paragraphs III through VI of the Findings of Fact which are owned and operated by the Foundation are part of an "enterprise" within the meaning and definition of Section 3(v) of 29 U.S.C. §203(v) in that the Foundation has operated the businesses under common control for common business purposes. Even though the Foundation is incorporated as a nonprofit religious organization, the identified businesses are engaged in ordinary commercial activities in competition with other commercial businesses. See *Marshall v. Woods Hale Oceanographic Institute*, 458 F.Supp. 708 (D. Mass. 1978); *cf. Mitchell v. Pilgrim Holiness Church*, 210 F.2d 879 (7th Cir.) *cert. den.*, 347 U.S. 1013 (1954).

IV.

The contentions of defendants that application of the Act to its commercial businesses violates constitutional principle have no merit.

A. *Overbreadth* — Extension of the Act to include the commercial activities of a nonprofit religious

organization is not unconstitutionally overbroad since coverage is rationally related to the statutorily recognized purpose of protecting competitors against unfair competition. 29 U.S.C. 202(a); *cf. Braunfeld v. Brown,* 336 U.S. 599 (1961).

B. *"Wilfully unequal and oppressive" application*— There is no persuasive evidence that the Secretary has engaged in a "patent abuse" of discretion in pursuing the claims against defendants. See *Moog Industries v. FTC,* 355 U.S. 411, 414 (1958). Furthermore, there is no proof that the Secretary has intentionally discriminated against defendants, nor is there any demonstration that plaintiff has intentionally discriminated as between religious groups or other nonprofit "enterprises". *Johnson v. Robinson,* 415 U.S. 361 (1974).

C. *Infringement upon free exercise of religion* — Application of the Act to religious organizations is not a violation of the free exercise clause of the First Amendment. *Mitchell v. Pilgrim Holiness Church,* 210 F.2d 879 (7th Cir.) *cert. den.* 347 U.S. 1013 (1954). The provisions of the Act are neutral and application of the Act does not interfere with the free exercise of any religious beliefs. A law does not deny the free exercise of religion because it makes practice of the religion more expensive. *Braunfeld v. Brown,* 366 U.S. 599, 605 (1961).

D. *Violation of the Establishment Clause* — Application of the Act to defendants does not violate the Establishment Clause. The Act has a secular legislative purpose; application neither advances nor inhibits religion; nor does application of the Act necessitate excessive entanglement between church and state. *Leman v. Kurtzman,* 403 U.S. 602 (1971).

V.

The people who worked in the Foundation's commercial businesses, identified in paragraphs III, IV, V and

VI, are "employees" of the defendants, Tony Alamo, Susan Alamo and the Foundation, within the meaning of the Act. By the same token, Tony Alamo, Susan Alamo and the Foundation are "employers" of those persons within the meaning of the Act.

As pointed out in *Goldberg v. Whitaker House Coop.,* 366 U.S. 28 (1960) at page 31:

> "By § 3(d) of the Act an 'employer' is any person acting 'in the interest of an employer in relation to an employee.' By § 3(e) an 'employee' is one 'employed' by an employer. By § 3(g) the term employ 'includes to suffer or permit to work.' "

Although many of the associates protest the payment of wages and contend they never contemplated compensation in their relationship with the Foundation's businesses, the "economic reality" is the test of employment. *Goldberg v. Whitaker House Coop., supra; United States v. Silk,* 331 U.S. 704 (1947); and *Rutherford Food Corp. v. McComb,* 331 U.S. 722 (1947). The associates contemplated they would be fed, clothed, sheltered and provided other forms of benefits as a result of their work at the Foundation's commercial businesses. Such benefits are simply wages in another form.

Under the circumstances, the Court concludes that *Mitchell v. Pilgrim Holiness Church Corp.,* 210 F.2d 879 (7th Cir. 1954) *cert. den.,* 347 U.S. 1013 (1954) is controlling. In that decision, the Court noted:

> "Here we have a remedial measure seeking to insure to the workers of the United States engaged in the production of goods for commerce a minimum wage sufficient to maintain a minimum standard of living which Congress deemed to be necessary to their well-being. We can find no reason for holding that the

employees of a church corporation, who work in a printing establishment owned and operated by the corporation, should not be entitled to the benefits of this remedial legislation. While some of the defendant's employees made affidavits stating that they considered their work to be "more than a job," and that in their positions they felt that there were helping in the work of the Lord, we must assume that the wages they received constituted the income on which they lived. It is not suggested that these employees could maintain a minimum standard of living any more cheaply than the employees of any other printing establishment in the City of Indianapolis. Nor is there any intimation that the minimum standard of living as fixed by the Act is not just as necessary to the health and well-being of the defendant's employees as it is to the health and well-being of the employees of any other printing establishment." 210 F.2d at 884.

Plaintiff is entitled to an injunction restraining the defendant employers from continuing to withhold payment or minimum wages and overtime compensation due workers found by this Court to come under the Act.

VI.

Defendants contend that a number of the associates who worked for the Foundation's benefit do not come under the Act because they worked for outside employers and donated their paycheck to the Foundation, worked in a "non-commercial" part of the Foundation's activities or worked in an "exempt" activity as identified in 29 U.S.C. § 213(a). It is not necessary to draw any legal conclusions with respect to those contentions at this point in view of the nature of the remedy. If a claim is filed which incorporates work activities not within those cov-

ered by the Act, the objection can be raised in opposition to that particular claim.

Remedy

The appropriate remedy, in light of the conclusions reached, is no less difficult than many other issues in this case. As previously discussed, neither the relief recommended by plaintiff, nor defendants is, in the opinion of the Court, a satisfactory solution. Since the action is an equitable claim, the Court has some latitude in fashioning an appropriate remedy.

I.

The Foundation and Tony Alamo are hereby restrained and enjoined from withholding the payment of overtime compensation found by the Court to be due the employees identified as "outside employees" in the amounts indicated in this memorandum.

II.

The Foundation and Tony Alamo shall furnish to the Secretary, within 10 days of this decision, the names and last known addresses of all persons who have been associates of the Foundation, or who have worked at any of the businesses identified in Paragraphs III, IV, V and VI from January 1, 1976, to the present. Promptly thereafter, the Secretary shall mail to each such associate, former associate, or worker, notice of this decision. The notice shall advise any associate who desires to submit a claim for back wages to submit a claim in the form of an affidavit within 45 days of the mailing of the notice by the Secretary. The form of notice and claim form shall

be prepared by the Secretary and approved by the Court. Within 20 days after the deadline for submitting claims, the Secretary shall submit a proposed finding of back wages due each claimant, based upon the affidavits, less applicable benefits found due, in accordance with the schedule of benefits findings in this memorandum. The defendants shall have 20 days thereafter in which to respond to the claims submitted.

III.

Defendants Tony Alamo and the Foundation are hereby enjoined and restrained from failing to comply with the provisions of 29 U.S.C.S. § 211 and the Regulations or orders prescribed by the Secretary thereunder.

Dated December 10, 1982.

/s/ William R. Overton
United States District Judge

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

NO. CIV 77-2183

RAYMOND J. DONOVAN, SECRETARY OF LABOR,
UNITED STATES DEPARTMENT OF LABOR

Plaintiff,

vs.

TONY AND SUSAN ALAMO FOUNDATION, ET AL.,

Defendants.

JUDGMENT

Pursuant to the Court's memorandum and orders of December 13, 1982, and this date, judgment is hereby entered in favor of the plaintiff.

Dated this February 7, 1983.

/s/ William R. Overton
United States District Judge

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

NO. CIV 77-2183

RAYMOND J. DONOVAN, SECRETARY OF LABOR,
UNITED STATES DEPARTMENT OF LABOR

Plaintiff,

vs.

TONY AND SUSAN ALAMO FOUNDATION, ET AL.,

Defendants.

ORDER

Pursuant to Rules 52(b) and 58 of the Federal Rules of Civil Procedure, plaintiff's motion for clarification and amendment of the Court's December 13, 1982, order, and for entry of judgment[1] is granted. The remedy section of Pages 39 and 40 of that order is modified to read as follows:

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1. The defendants filed a notice of appeal on December 23, 1982, and plaintiff has filed his Eighth Circuit appearance with the Court of Appeals. Defendants contend that plaintiff's failure to object to the appeal and entry of appearance before the Eighth Circuit constitutes a waiver of entry of judment. *Bankers Trust Co. v. Mallis,* 435 U.S. 381 (1978). In 1979, Congress amended the Federal Rules of Appellate Procedure to deal with premature appeals. Rule 4(a)(2) of the Federal Rules of Appellate Procedure. Rule 4(a)(2) states that a notice of appeal which is filed after announcement of decision or order but before entry of judgment or order shall be treated as filed after such entry or on the day thereof. Upon entry of a separate judgment, the defendant may file a new notice of appeal, or the Court of Appeals may maintain jurisdiction over defendants' December 23, notice of appeal in order to hear the appeal after judgment is entered. *Reukema's Petroleum Co. v. Admiral Petroleum Co.,* 613 F.2d 627 (6th Cir. 1979).

Remedy

The appropriate remedy, in light of the conclusions reached, is no less difficult than many other issues in this case. As previously discussed, neither the relief recommended by the plaintiff or defendants is, in the opinion of the Court, a satisfactory solution. Since the action is an equitable claim, the Court has some latitude in fashioning the appropriate remedy.

I.

Defendants Tony Alamo and the Tony and Susan Alamo Foundation, their officers, agents, servants, employees, and all persons in active concert or participation with them are hereby permanently enjoined and restrained from failing to comply with Sections 6, 7 and 15 of the Fair Labor Standards Act of 1938, 29 U.S.C. §§ 206, 207 and 215.

II.

Defendants Tony Alamo and the Tony and Susan Alamo Foundation are hereby restrained and enjoined from withholding the payment of overtime compensation found by the Court to be due the employees identified as "outside employees" in the amounts indicated in this memorandum, together with prejudgment interest thereon from the dates of withholding. The rate of judgment shall be calculated in accordance with 26 U.S.C. § 6621.

III.

Defendants Tony and Susan Alamo Foundation are hereby restrained and enjoined from withholding minimum wage and overtime compensation of all persons who

have been associates of the Foundation or who have worked at any of the businesses identified in Paragraphs III, IV, V and VI, from January 1, 1976, through the present who make claims for back wages pursuant to the following procedure.

The Foundation and Tony Alamo shall furnish to the Secretary, within 10 days of this decision, the names and addresses of all persons who have been associates of the Foundation, or who have worked in any of the businesses of the Foundation identified in Paragraphs III, IV, V and VI from January 1, 1976, to the present. Promptly thereafter, the Secretary shall mail to each associate, former associate, or worker, notice of the decision. The notice shall advise any associate who desires to submit a claim for back wages to submit a claim in the form of an affidavit within 45 days of the mailing of the notice by the Secretary. The form of notice and claim form shall be prepared by the Secretary and approved by the Court. Within 20 days after the deadline for submitting claims, the Secretary shall submit a proposed finding of back wages due each claimant, based upon the affidavits, less applicable benefits found due, in accordance with the schedule of benefits findings in this memorandum. The defendants shall have 20 days thereafter in which to respond to the claims submitted.

IV.

Defendants Tony Alamo and the Foundation are hereby enjoined and restrained from failing to comply with § 11(c) of the Fair Labor Standards Act, 29 U.S.C. § 211(c), and the regulations and orders prescribed by the Secretary thereunder.

It is so ordered this February 7, 1983.

/s/ William R. Overton
United States District Judge

UNITED STATES COURT OF APPEALS
For the Eighth Circuit
September Term, 1983

Nos. 82-2549/83-1463-WA

RAYMOND J. DONOVAN, ETC.,
Appellee/Cross-Appellant,

vs.

TONY AND SUSAN ALAMO FOUNDATION, ET AL.,
Appellants/Cross-Appellees.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF ARKANSAS.

It is now here ordered by the Court that motion to stay issuance of mandate pending certioriari proceedings (Appellants/Cross-Appellees') is denied.

March 12, 1984

UNITED STATES COURT OF APPEALS
For the Eighth Circuit

JUDGMENT
September Term, 1983

No. 82-2549WA and 83-1463WA

RAYMOND J. DONOVAN, SECY. OF LABOR
Appellee,

vs.

TONY & SUSAN ALAMO FOUNDATION
Appellants.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF ARKANSAS.

This appeal from the United States District Court for the Western District of Arkansas was submitted on the record of the said District Court, briefs of the parties and was argued by counsel.

After consideration, it is ordered and adjudged that the judgment of the said District Court in this cause is affirmed in part and vacated in part and remanded to District Court for proceedings consistent with the opinion of this court.

December 5, 1983

A True Copy:

ATTEST:

Clerk, U. S. Court of Appeals, Eighth Circuit, 3/12/84

APPENDIX B

UNITED STATES COURT OF APPEALS
For the Eighth Circuit

Nos. 83-1463, 82-2549

RAYMOND J. DONOVAN, SECRETARY OF LABOR, U. S. DEPARTMENT OF LABOR

Plaintiff/Appellee/Cross Appellant,

vs.

TONY AND SUSAN ALAMO FOUNDATION, TONY ALAMO, SUSAN ALAMO AND LARRY LAROUCHE

Defendants/Appellants/Cross-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARKANSAS, FORT SMITH DIVISION.

Submitted: September 17, 1983
Filed: December 5, 1983

Before LAY, Chief Judge, McMILLIAN, Circuit Judge and DUMBAULD*, Senior District Judge.

DUMBAULD, Senior District Judge.

The questions in this case are whether the Fair Labor Standards Act and its minimum wage, overtime, and record-keeping provisions (29 U.S.C. 201 *et seq.*), properly construed, apply to certain persons engaged in working for a religious organization, and whether, if so, such application conflicts with the religious guarantees of the

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*The Honorable Edward Dumbauld, Senior U.S. District Judge of the Western District of Pennsylvania, sitting by designation.

First Amendment. We answer the first question affirmatively, the second in the negative.

The Secretary of Labor, under 29 U.S.C. 217, brought an action against appellants the Tony and Susan Alamo Foundation, a California corporation, and three of its officers individually[1], alleging violations of the minimum wage, overtime, and record-keeping provisions of the Act [29 U.S.C. 206(b), 207(a), 211(c), 215(a)(2), and 215(a)(5)] over a period of years.[2]

The foundation engages actively in evangelism and is recognized by the IRS as a religious and charitable organization under 28 U.S.C. 501(c)(3).

Certain persons are admittedly employees of the foundation, and any controversy regarding such "outside employees" relates merely to factual questions as to whether and how much overtime they worked. As to these matters the findings of the District Court are not "clearly erroneous." Rule 52(a) FRCP.

The genuine and substantial controversy in the case relates to the status of some 300 persons designated as "associates" of the foundation. The organization's evangelical work has been carried on among derelicts, drug

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[1]Susan Alamo, named as an individual defendant, died *pendente lite.*

[2]§206(b) requires payment by an employer to employees of wages at the minimum rate fixed by §206(a)(1). §207(a) provides for overtime pay of time and a half; §211 (c) provides for record-keeping; §215(a)(2) makes violations of §206 and §207 illegal; §215(a)(5) makes violations of §211(c) illegal; and §217 empowers District Courts to restrain violations of §215, including "restraint of any withholding of payment of minimum wages or overtime compensation found by the court to be due to employees" in violation of §215(a)(2).

addicts, and criminals. As part of their rehabilitation they perform useful work in the thirty some commercial businesses operated by the foundation. They also receive lodging, food, transportation, and medical care provided by the foundation. They claim to be volunteer workers and to expect no compensation. They do expect to receive (and indeed otherwise many of them could not live without resort to public assistance or crime) the aforementioned benefits of lodging, food, transportation, and medical care.

The questions in this case are difficult and delicate. Perhaps the key to their determination is the familiar maxim of Justice Holmes that all questions are ultimately questions of degree and must be decided on their particular facts.[3]

It is clear, on the one hand, that an individual such as a prosperous lawyer ringing the bell for the Salvation Army on the street at Christmas time for a few hours is not an "employee," but a volunteer donating his time to the advancement of a worthy cause. The same is true of persons caring for children on Sunday during church services, or preparing and serving meals at a church dinner.

It must also be acknowledged that *laborare est orare*, that

> "Who sweeps a room, as for Thy laws
> Makes that and th' action fine"[4]

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[3]For citation of cases where Holmes elaborates this aphorism, see *Pgh. & New England Trucking Co. v. U.S.*, 345 F. Supp. 743, 747 n. 4 (1972).

[4]George Herbert, *The Elixir*, stanza 5.

and that St. Paul was a tentmaker,[5] and that champagne and chartreuse owe their origin to the extra-religious activities of monastic orders.

Yet it is equally clear that there comes a time when secular endeavor must be recognized as such, and passes over the line separating it from the sacred functions of religious worship.

Perhaps the distinction somewhat resembles that between the essentially governmental activities of a State as a State, and its activities of a commercial or proprietary nature. When a State sells liquor or bottled water, or runs a railroad, it casts aside its sovereign attributes and competes on the same footing as other entrepreneurs in the market place. *South Carolina v. U. S.*, 199 U. S. 437, 461, 463 (1905); *New York v. U. S.*, 326 U. S. 572, 575, 579, 582 (1946); *National League of Cities v. Usery*, 426 U. S. 833, 845 (1976); *EEOC v. Wyoming*, 103 Sup. Ct. 1054, 1060-82 (1983).

The same metamorphosis or transmogification occurs when a religious organization turns from the things of God to the things of Caesar.[6]

Upon careful reflection we are impelled to conclude that the foundation's activities in the case at bar have overstepped the dividing line and become subject to the requirements of the Fair Labor Standards Act.

The extensive scope and substantial character of the foundation's commercial operations are elaborated in

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[5]Acts 19:3, 20:34.

[6]"And he said unto them, 'Render therefore unto Caesar the things which be Caesar's, and unto God the things which be God's.' " Lk. 20:25.

Judge Overton's opinion. In California the foundation furnishes contract labor crews, engages in the manufacture and retail sale of clothing, and runs a service station supplying gasoline to motorists.

In Arkansas the foundation's commercial dealings include, *inter alia,* advertising, landscaping, service stations, restaurants, production and sale of candy, manufacture and retail sale of clothing, groceries, vehicle repairs, record-keeping, construction, plumbing, sand and gravel, construction, electrical contracting, ready-mixed concrete, hog farms, feed and farm supplies, real estate development, motor carrier transportation of freight, and other commercial ventures.[7]

It must be emphasized that these businesses serve the general public, in competition with other private entrepreneurs. The gas stations, for example, serve any motorist, and are not limited to fueling vehicles used for transportation of foundation associates on their travel in connection with their evangelical efforts. The grocery stores, clothing stores, and restaurants serve the public at large, not merely associates of the foundation. The foundation's motor trucks are not confined to private carriage of supplies for the foundation's own needs, but are common carriers holding out service to the public generally.

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[7]The fact that these various businesses, though conducted under different trade names, are controlled entirely by the foundation, makes all these activities an "enterprise" under 29 U.S.C. 203(r) and 206(a).

Under the "economic reality" test[8] it would be difficult to conclude that the extensive commercial enterprise operated and controlled by the foundation was nothing but a religious liturgy engaged in bringing good news to a pagan world. By entering the economic arena and trafficking in the marketplace, the foundation has subjected itself to the standards Congress has prescribed for the benefit of employees. The requirements of the Fair Labor Standards Act apply to its laborers.

It remains to consider whether application of the Fair Labor Standards Act to "associates" of the foundation in the case at bar violates the religious guarantees of the First Amendment.

The First Amendment's provisions touching religious liberty are twofold. Not only is the individual free from all governmental coercion to participate against his will in the support of any religion (either directly, as by compulsion to attend ceremonies, or indirectly, as by compulsion through taxation to make contributions), but also is free from all governmental coercion interfering with his participation in the support (directly or indirectly) of any religion which he does choose of his own will to embrace.[9]

As stated by Justice Owen J. Roberts in *Cantwell v. Connecticut,* 310 U.S. 296, 303 (1940):

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[8]For purposes of the National Labor Relations Act, said Justice Reed in *U.S. v. Silk,* 331 U.S. 704, 713 (1947), "'employees' included workers who were such as a matter of economic reality." The same day he applied the same test with respect to the Fair Labor Standards Act. *Rutherford Food Corp. v. McComb,* 331 U.S. 722, 727 (1947).

[9]Dumbauld, *The Bill or Rights and What It Means Today* (1957), 2nd ed. 1963), 110-111.

> The constitutional inhibition of legislation on the subject of religion has a double aspect. On the one hand, it forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship. . . . On the other hand, it safeguards the free exercise of the chosen form of religion.

It has become customary to describe these two facets of constitutional protection as the Establishment Clause and the Free Exercise Clause, respectively.[10]

Both types of guarantee were contained in the celebrated Virginia Act for Establishing Religious Freedom[11] drafted by Thomas Jefferson[12] and pushed through the Virginia legislature by James Madison in 1786 before he left the legislative arena at Richmond to gain new laurels on the national scene at the Philadelphia convention of 1787 as Father of the Federal Constitution.[13] The major role played by Madison in securing enactment of the Bill of Rights, and in particular the religious clauses of the First Amendment, has been repeatedly recognized.[14]

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[10]The Amendment reads: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; . . ." See *Abington School District v. Schempp*, 374 U.S. 203, 215 (1963).

[11]12 Hening, *The Statutes at Large . . . of Virgina* (1823) 84-86.

[12]For Jefferson's draft, which was in some particulars amended in the legislature, see 2 P.L. Ford (ed.), *The Works of Thomas Jefferson* (1904) 438-41, and 2 Julian Boyd (ed.), *The Papers of Thomas Jefferson* (1959) 545-53.

[13]Dumbauld, *Thomas Jefferson and the Law* (1978) 137, 139. Jefferson was in France from 1784-1789 serving the United States as a diplomat.

[14]A detailed account is given in Justice Rutledge's dissenting opinion in *Everson*, 330 U.S. at 33-41. See also Dumbauld, *The Bill of Rights and What It Means Today* (1957, 2nd ed. 1963) 7-8, 21, 23-24, 33-44, 48; Dumbauld, "State Precedents for the Bill of Rights," 7 J. Pub. Law (1958) 323.

The operative portion of the Virginia statute provided:

> "That no man shall be compelled to frequent or support any religious worship, place, or ministry, whatsoever, nor shall be enforced, restrained, molested or burthened in his body or goods, nor shall otherwise suffer, on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and that the same shall in no wise diminish, enlarge, or affect their civil capacities. . . ."[15]

In Establishment Clause cases a three-part test has been elaborated by the Supreme Court. Government action passes muster under this clause if: (1) the statute has a secular legislative purpose; (2) its principal or primary effect must neither advance nor inhibit religion; (3) it must not foster excessive government entanglement with religion. *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971).

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[15]It will be noted that the Virginia act, besides establishment and free exercise clauses, provides a third guarantee, that civil rights shall not be affected by reason of religious views. In the federal Constitution, this point is covered by Article VI, clause 3, providing that "no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States." In England dissenters from the established church were subject to the civil disability of exclusion from public office, as well as from the practice of law, medicine, or any other liberal profession. J. R. Tanner, *Constitutional Documents of the Reign of James I* (1930) 109. They were also obliged to attend, and to pay taxes to support, the services of the established church. Tanner, *Tudor Constitutional Documents* (2nd ed. 1930) 153, 197. They were also forbidden to engage in any other form of religious worship. *Ibid.*, 119-20. Likewise in Virginia, under the harsh code of laws issued by Sir Thomas Dale in 1611, failure to attend church services was punishable by death. Dumbauld, *Thomas Jefferson and the Law* (1978) 126, 232.

Measured by this standard, the Fair Labor Standards Act in the case at bar does not run afoul of the Establishment Clause. The secular legislative purpose of this legislation is clear. It was set forth by Justice Reed, in *Rutherford Food,* cited in note 8 *supra.* It is straightforward secular social legislation of an economic character aimed at eliminating conditions detrimental to the health and economic welfare of workers.[16] These circumstances make clear likewise that there is no infringement of the second point of the test, regarding the effect of the legislation. It has nothing to do with religion, and neither advances nor inhibits religious concerns.

Likewise no "excessive entanglement between government and religion"[17] can be discerned in the case at bar, although this issue is probably appellees' strongest point, and *NLRB v. Roman Catholic Bishop of Chicago,* 440 U.S. 490, 501-504 (1979), the best case that could be cited in appellees' behalf, although it arose under a different statute.[18]

It should be noted that the doctrine of "excessive entanglement" arose in connection with church schools, rather than in connection with church-operated charities

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[16]Though *Everson v. Bd. of Education,* 330 U.S. 1, 15-16 (1947), the pioneer leading case on the Establishment Clause in an educational setting, had been decided only four months earlier (a 5-4 decision with strong dissents by Justices Jackson and Rutledge) the idea of any infringement of that clause by the economic impact of the Fair Labor Standards Act did not cross the mind of any member of the unanimous *Rutherford* court.

[17]403 U.S. at 614.

[18]In *Rutherford, supra,* 331 U.S. at 723, it was said that the Fair Labor Standards Act is "social legislation . . . of the same general character as the National Labor Relations Act" and the Social Security Act.

or commercial businesses, such as are involved in the case at bar.

In the *Bishop of Chicago* case the Court "recognized the critical and unique role of the teacher" in fulfilling the mission of a church-operated school (whose very *raison d' etre* is the propagation of a religious faith), and that the church-teacher relationship in a church-operated school "differs from the employment relationship in a public or other non-religious school." 440 U.S. at 501-504. Teachers being living persons, they cannot, like books, be inspected once to determine whether their teaching conforms to the constitutional standards respecting separation of church and state. Rather, there must be ongoing comprehensive and continuous state surveillance and monitoring to ensure that First Amendment restrictions are obeyed. This process necessarily involves "excessive and enduring entanglement between state and church." *Lemon v. Kurtzman, supra,* 403 U.S. at 619. The same type of continuing audit would be needed to ensure the proper application of funds, and to ensure that buildings constructed with public moneys were never used for religious instruction. *Ibid.,* 608, 620-22.[19]

The *Bishop of Chicago* case, which shows to what length the Supreme Court will go in restricting coverage of a statute in order to avoid raising substantial constitutional questions with regard to "entanglement", was itself a church school case and implicated the unique role of the teacher and the danger of government involvement in day-to-day administration and monitoring.

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[19]But see *Tilton v. Richardson,* 403 U.S. 672, 687-88 (1971); *Hunt v. McNair,* 413 U.S. 734, 745-49 (1973), where the need for inspection was found to be insignificant.

Application of the Fair Labor Standards Act in the case at bar, however, would be more akin to the inspection of textbooks which *Lemon v. Kurtzman* distinguished from the continuous monitoring required where the unintentional and spontaneous conduct of teachers constituted the human factor creating the danger of infringing the "wall of separation" between church and state. 403 U.S. at 619. The role of public officials in enforcing wage and hour requirements would be more analogous to the task of accountants or auditors examining the books of a business enterprise. Their function is to scrutinize written records relating to past transactions rather than to evaluate the "live" activities of teachers within the framework of administrative policy.

Another significant distinction which weakens the force of the *Bishop of Chicago* case as a possible precedent for the case at bar is derivable from the differing nature of the statutory schemes involved. Though the general policy and purpose of both statutes as social legislation for protecting the health and economic welfare of workers is similar,[20] the mechanisms utilized are quite different.

The Fair Labor Standards Act, as stated above, effects it objectives by the dull and detailed financial technique peculiar to accountants. The National Labor Relations Act on the other hand, utilizes, *inter alia,* the methods of collective bargaining and elections to choose employee representatives.

Collective bargaining, like all bargaining, is confrontational and adversarial in its nature. Each side is moti-

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[20]See note 18, *supra.*

vated by self-interest and seeks to increase its own benefits at the expense of the opposing party. Conflict is inherent in the situation. Similar partisan contests infect the process of electing employee representatives, as competing labor unions strive for mastery. These aspects of the operation of the Labor Relations statute dominated the Court's thinking in the *Bishop of Chicago* case (440 U.S. at 503), but have no bearing on the application of the wage and hour requirements in the case at bar, or on the calculation of the amounts due the underpaid workers.

There is surely no constitutional right, under the religion clauses of the First Amendment, to pay substandard wages.[21]

The essence of the Establishment Clause is its prohibition of coercion by governmental power applied for the benefit of religion. Such coercion may consist in compulsion to participate in religious activities or ceremonies, or in compulsion to pay taxes for the support of religious activities or programs. As succinctly summarized in the landmark Virginia legislation sponsored by Jefferson and Madison which was quoted hereinabove, the prohibition forbids governmental compulsion either "to frequent or support" any religious activity.

Obviously, appellants in the case at bar are not being compelled by the government to "frequent" any religious observance. They are not being dragooned into attending any church services or ceremonies against their

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[21]The right of a State to pay substandard wages, recognized in *League of Cities v. Usery,* 426 U.S. 833, 844-45 (1976), was based on principles of federalism, not on First Amendment grounds.

will. It is equally plain that they are not being compelled to "support" any such activities. All that they are compelled to do is to pay the standard living wage for work done in their commercial enterprises. This is purely a matter of social legislation in the field of economic welfare, not religion. Appellants' contention is a far cry from Jefferson's pronouncement "That to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhors is sinful and tyrannical."[22]

Appellants' contention that the Free Exercise Clause would be violated by application of the wage and hour requirements in the case at bar is even more clearly without merit. Such enforcement of wage and hour provisions cannot possibly have any direct impact on appellants' freedom to worship and evangelize as they please. The only effect at all on appellants is that they will derive less revenue from their business enterprises if they are required to pay the standard living wage to the workers. And the Supreme Court has squarely held that legisla-

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[22]2 Ford, *Works of Thomas Jefferson* (1904) 439. On another occasion he wrote: "The restoration of the rights of conscience relieved the people from taxation for the support of a religion not theirs; for the establishment was truly of the religion of the rich, the dissenting sects being entirely composed of the less wealthy people." 1 Ford, *Works* (1904) 78. Relief of dissenters from paying tithes to maintain the established Anglican church in Virginia was one of Jefferson's early legislative triumphs in the Virginia House of Delegates, after what he regarded as one of "the severest contests in which I have ever been engaged." *Ibid.*, 62-63. The thoroughing act for religious freedom did not become law until a decade later. For comment on the act of December 9, 1776, 9 Hening, *Statutes* (1821) 164, see 1 Boyd *Papers of Thomas Jefferson* (1950) 525-58; and Dumas Malone, *Jefferson the Virginian* (1948) 274-80.

tion otherwise legitimate does not violate the Free Exercise Clause merely because financial detriment results. *Braunfeld v. Brown*, 366 U.S. 599, 605-606 (1961).

With respect to the Government's cross-appeal, we conclude that the District Court's proposed procedure requiring "associates" to initiate proceedings to obtain payment of amounts due them does not comport with the policy of the statute. It would place on the employee a burden properly falling upon the employer.

As the Supreme Court held in *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 687-88 (1946), it is the employer who is charged with the duty of record-keeping so that the amount of work performed and compensation earned may be calculated with precision. An employer failing to comply with this duty cannot complain if the record is deficient and the court must resort to a reasonable approximation in computing the amount of damages awarded.

The solution to the problem presented "where the employer's records are inaccurate or inadequate and the employee cannot offer convincing substitutes" is not to "penalize the employee by denying him any recovery on the ground that he is unable to prove the precise extent of uncompensated work. Such a result would place a premium on an employer's failure to keep proper records in conformity with his statutory duty; it would allow the employer to keep the benefits of an employee's labors without paying the compensation as contemplated by the Fair Labor Standards Act. In such a situation we hold that an employee has carried out his burden if he proves that he has in fact performed work for which he was im-

properly compensated and if he produces sufficient evidence to show the amount and extent of that work as a matter of just and reasonable inference. The burden then shifts to the employer to come forward with evidence of the precise amount of work performed or with evidence to negative the reasonableness of the inference to be drawn from the employee's evidence. If the employer fails to produce such evidence, the court may then award damages to the employee, even though the result be only approximate." (328 U.S. at 687-88).

The reasons supporting the *Mt. Clemens Pottery* standard were clearly and forcefully set forth by the Court (328 U.S. at 688):

> The employer cannot be heard to complain that the damages lack the exactness and precision of measurement that would be possible had he kept records in accordance with the requirements of § 11(c) of the Act. And even where the lack of accurate records grows out of a bona fide mistake as to whether certain activities or non-activities constitute work, *the employer,* having received the benefits of such work, *cannot object to the payment for the work on the most accurate basis possible under the circumstances.* Nor is such a result to be condemned by the rule that precludes the recovery of uncertain and speculative damages. That rule applies only to situations where the fact of damage is itself uncertain. But here we are assuming that the employee has proved that he has performed work and has not been paid in accordance with the statute. The damage is therefore certain. The uncertainty lies only in the amount of damages arising from the statutory violation by the employer. In such a case "it would be a perversion of fundamental principles of justice to deny all relief to the injured person, and thereby relieve the wrongdoer from making any amend for his acts." *Story Parchment Co. v. Paterson Co.,* 282 U.S. 555, 563. It is enough under these circumstances if there is a basis for a reasonable inference as to the extent of the damages. *Eastman Kodak Co. v. Southern Photo Co.,* 273 U.S. 359, 377-379; *Palmer v. Connecticut R. Co.,* 311 U.S. 544, 500-561; *Bigelow v. RKO Radio Pictures,* 327 U.S. 251, 263-266. [Italics supplied].

This Court, in several cases, has consistently followed the *Mt. Clemens Pottery* standard. *Marshall v. Van Matre,* 634 F. 2d 1115, 1118-19 (1980); *Mumbower v. Callicott,* 526 F. 2d 1183, 1186 (1975); *Mitchell v. Williams,* 420 F. 2d 67, 69-70 (1969). That standard "requires courts to apply practical standards" (420 F. 2d at 69) and does not permit employers failing to keep the records required by law "to benefit from their failure to do so" (526 F. 2d at 1186). The *Mt. Clemens Pottery* standard is applicable notwithstanding the employer's "good faith" and lack of intention "to violate the act purposefully." (634 F. 2d at 1118).

Accordingly, in conformity with the controlling authorities, paragraph II under the heading "Remedies" of the District Court's order of December 10, 1982 is hereby vacated and the cause remanded for determination of the amounts of wages owing, such determination to be based either upon the present record or as supplemented by such additional evidence as the District Court may afford the parties an opportunity to offer (420 F. 2d at 71). In all other respects the judgment of the court below is

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Nos. 82-1463, 83-2549

RAYMOND J. DONOVAN, Secretary of Labor,
U.S. Department of Labor,

Plaintiff/Appellee/
Cross Appellant,

v.

TONY and SUSAN ALAMO FOUNDATION,

Defendants/Appellants/
Cross-Appellees.

Appeal from the United States District Court for the
District of Arkansas, Fort Smith Division

ORDER

Before LAY, Chief Judge, McMILLIAN, Circuit Judge and DUMBAULD*, Senior District Judge.

DUMBAULD, Senior District Judge.

IT IS ORDERED, that the opinion filed December 5, 1983, in the above case be amended as follows:

Page 2, line 8: delete "any;" and insert "chiefly" for "merely."

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*The Honorable Edward Dumbauld, Senior U. S. District Judge of the Western District of Pennsylvania, sitting by designation.

Page 15: Delete the second paragraph and substitute the following:

But although it is clear that the employer has the burden of establishing the amount of damages to which the employee is entitled, *Donovan v. Williams Chemical Co.*, 682 F. 2d 185, 190 (8th Cir. 1982), and has a duty to keep records pertinent to this calculation, we are unable to accept the Secretary's contention that no other evidence may be utilized for this purpose than the records which the employer is required by law to keep.

The court is not obliged to accept the Secretary's computation as conclusive simply because the employer has failed to provide the "preappointed evidence" (as Jeremy Bentham would express it) which he is obliged to preserve. In *Williams Chemical*, this Court remanded the case to the District Court with directions that "additional evidence" might be considered with respect to the issue in controversy.[23] And in *Mt. Clemens Pottery, supra*, the Supreme Court regarded it as appropriate for the court's determination to be based upon "the most accurate basis possible under the circumstances" and held that it is sufficient "if there is a basis for a reasonable inference as to the extent of the damages." (328 U.S. at 688).

Accordingly, in conformity with the controlling authorities, paragraph II under the heading "Remedies" of

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[23]682 F. 2d at 190. See also *Donovan v. New Floridian Hotel, Inc.*, 676 F. 2d 468, 474 (11th Cir. 1982), which speaks of the failure of the employer to produce "records *or other evidence*" to establish the "reasonable cost" of facilities provided to employees. (Italics supplied).

the District Court's order of December 10, 1982 is hereby vacated and the cause remanded for determination of the amounts of wages owing, such determination to be based either upon the present record or as supplemented by such additional evidence as the District Court may afford the parties an opportunity to offer (420 F. 2d at 71).

At the same time upon remand the parties may wish to develop the record further with respect to the status of A. Z. Hudson, one of the Foundation's "outside employees" who was treated by the District Court as a "supervisory salaried employee" exempt under 29 U.S.C. 213(a) (1). The Secretary's contention that this defense was excluded from the case as a sanction against the Foundation for failing to comply with discovery orders seems excessively technical and would exalt form over substance, in view of the fact that at a later stage of the case the trial court permitted evidence to be admitted regarding this issue.

The District Court clearly found that Hudson was supervisor of Alamo's construction company with power to hire and fire employees (as required by 29 CFR 541.106) and that he received a weekly salary of $650 (29 CFR 541.1(f) requires only $155 per week). The court did not expressly find that he regularly supervised at least two full-time employees (as required by 29 CFR 541.105) but it is highly improbable that a construction company could operate with less than two employees. The Secretary's principal argument is that Hudson's salary was not paid continuously regardless of fluctuations in the volume of business, as required by 29 CFR 541.118.

If the facts regarding Hudson's employment were not fully and sufficiently developed so as to establish clearly

whether he met the criteria for exemption *vel non*, the matter can be clarified upon remand.

In all other respects the judgment of the court below is AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

September Term, 1983

82-2549-WA AND 83-1463-WA.

RAYMOND J. DONOVAN, ETC.,

Appellee/Cross Appellant,

VS.

TONY AND SUSAN ALAMO FOUNDATION;
TONY ALAMO, SUSAN ALAMO AND
LARRY LAROUCHE,

Appellants/Cross Appellees.

APPEALS FROM THE UNITED STATES
DISTRICT COURT FOR THE
WESTERN DISTRICT OF ARKANSAS

Petitions of appellants/cross appellees and Appellee/cross appellant for rehearing filed in this cause having been considered, it is now here ordered by this Court that the same be, and they are hereby, denied.

March 1, 1984

APPENDIX C

28 U.S.C.A. §1291:

Final Decisions of District Courts. The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in section 1292(c) and (d) and 1925 of this title.

29 U.S.C.A. §201:

This chapter may be cited as the "Fair Labor Standards Act of 1983".

29 U.S.C.A. §203(e) (1):

Except as provided in paragraphs (2) and (3), the term "employee" means any individual employed by an employer.

29 U.S.C.A. §203(g):

"Employee" includes to suffer or permit to work.

29 U.S.C.A. §203(m):

"Wage" paid to any employee includes the reasonable costs, as determined by the Administrator, to the employer of furnishing such employee with board, lodging, or other facilities, if such board, lodging or other facilities are customarily furnished by such employer to his employees: *Provided,* That the cost of board, lodging, or other facilities shall not be included as a part of the wage paid to any employee to the extent it is excluded there-

from under the terms of a bona fide collective bargaining agreement applicable to the particular employee: *Provided further,* That the Secretary is authorized to determine the fair value of such board, lodging, or other facilities for defined classes of employees and in defined areas, based on average cost to the employer or to groups of employers similarly situated, or average value to groups of employees, or other appropriate measures of fair value. Such evaluations, where applicable and pertinent, shall be used in lieu of actual measure of cost in determining the wage paid to any employee.

29 U.S.C.A. § 203(r):

"Enterprise" means the related activities performed (either through unified operation or common control) by any person or persons for a common business purpose, and includes all such activities whether performed in one or more establishments or by one or more corporate or other organizational units including departments of an establishment operated through leasing arrangements, but shall not include the related activities performed for such enterprise by an independent contractor.

29 U.S.C.A .§ 203(s)(1), (3), (4), (5), and (6):

"Enterprise engaged in commerce or in the production of goods for commerce" means an enterprise which has employees engaged in commerce or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person, and which (1) during the period February 1, 1967, through January 31, 1969, is an enterprise whose annual gross volume of sales made or business done is not less than

$500,000 (exclusive of excise taxes at the retail level which are separately stated) or is a gasoline serve establishment whose annual gross volume of sales is not less than $250,000 (exclusive of excise taxes at the retail level which are separately stated), and beginning February 1, 1969, is an enterprise, other than an enterprise which is comprised exclusively of retail or service establishments and which is described in paragraph (2) whose annual gross volume of sales made or business done is not less than $250,000 (exclusive of excise taxes at the retail level which are separately stated); . . . (3) is engaged in laundering, cleaning, or repairing clothing or fabrics; (4) is engaged in the business of construction or reconstruction, or both; (5) is engaged in the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, the mentally ill or defective who reside on the premises of such institution, a school for mentally or physically handicapped or gifted children, a preschool, elementary or secondary school, or an institution of higher education regardless of whether or not such hospital, institution, or school is public or private or operated for profit or not for profit); or (6) is an activity of a public agency.

29 U.S.C.A. §206(a)(1):

Every employee shall pay to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, wages at the following rates: (1) not less than $2.65 an hour during the year beginning January 1, 1978, not less than $2.90 an hour during the year beginning January 1, 1979, not less than $3.10 an hour during the year beginning January 1, 1980, and not less than $3.35

an hour after December 31, 1980, except as otherwise provided in this section.

29 U.S.C.A. § 206(b):

Every employer shall pay to each of his employees (other than an employee to whom subsection (a)(5) of this section applies) who in any workweek is engaged in commerce or in the production of goods for commerce, and who in such workweek is brought within the purview of this section by the amendments made to this chapter by the Fair Labor Standards Amendments of 1966, title IX of the Education Amendments of 1972, or the Fair Labor Standards Amendments of 1974, wages at the following rate: Effective after December 31, 1977, not less than the minimum wage rate in effect under subsection (a)(1) of this section.

29 U.S.C.A. § 207(a) (1):

(a) Employees engaged in interstate commerce; additional applicability to employees pursuant to subsequent amendatory provisions. (1) Except as otherwise provided in this section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

29 U.S.C.A. § 211:

(a) The Administrator or his designated representatives may investigate and gather data regarding the wages,

hours, and other conditions and practices of employment in any industry subject to this chapter, and may enter and inspect such places and such records (and make transcriptions thereof), question such employees, and investigate such facts, conditions, practices, or matters as he may deem necessary or appropriate to determine whether any person has violated any provision of this chapter, or which may aid in the enforcement of the provisions of this chapter. Except as provided in section 212 of this title and in subsection (b) of this section, the Administrator shall utilize the bureaus and divisions of the Department of Labor for all the investigations and inspections necessary under this section. Except as provided in section 212 of this title, the Secretary of Labor shall bring all actions under section 217 of this title to restrain violations of this chapter. (b) With the consent and cooperation of State agencies charged with the administration of State labor laws, the Administrator and the Secretary of Labor may, for the purpose of carrying out their respective functions and duties under this chapter, utilize the services of State and local agencies and their employees and, notwithstanding any other provision of law, may reimburse such State and local agencies and their employees for services rendered for such purposes. (c) Every employee subject to any provision of this chapter or of any order issued under this chapter shall make, keep, and preserve such records of the persons employed by him and of the wages, hours, and other conditions and practices of employment maintained by him, and shall preserve such records for such periods of time, and shall make such reports therefrom to the Administrator as he shall prescribe by regulation or order as necessary or appropriate for the enforcement of the provisions of this chapter or the regu-

lations or orders thereunder. (d) The Administrator is authorized to make such regulations and orders regulating, restricting, or prohibiting industrial homework as are necessary or appropriate to prevent the circumvention or evasion of and to safeguard the minimum wage rate prescribed in this chapter, and all existing regulations or orders of the Administrator relating to industrial homework are continued in full force and effect.

29 U.S.C.A. § 215(a)(2), (3), (4), and (5):

(a) After the expiration of one hundred and twenty days from June 25, 1938, it shall be unlawful for any person . . . (2) to violate any of the provisions of section 206 or section 207 of this title, or any provisions of any regulation or order of the Administrator issued under section 214 of this title; . . . (4) to violate any of the provisions of section 212 of this title; (5) to violate any of the provisions of section 211(c) of this title, or any regulation or order made or continued in effect under the provisions of section 211(d) of this title, or to make any statement, report, or record filed or kept pursuant to the provisions of such section or of any regulation or order thereunder, knowing such statement, report, or record to be false in a material respect.

29 U.S.C.A. § 215(b):

(b) For the purposes of subsection (a)(1) of this section proof that an employee was employed in any place of employment where goods shipped or sold in commerce were produced, within ninety days prior to the removal of the goods from such place of employment, shall be prima facie evidence that such employee was engaged in the production of such goods.

29 U.S.C.A. § 217:

The district courts, . . . shall have jurisdiction, for cause shown, to restrain violations of section 215 of this title, including in the case of violations of section 215(a)(2) of this title the restraint of any withholding of payment of minimum wages or overtime compensation found by the court to be due to employees under this chapter (except sums which employees are barred from recovering, at the time of the commencement of the action to restrain the violations, by virtue of the provisions of section 255 of this title).

Internal Revenue Code §§ 501(a) and (c) (3):

(a) Exemption From Taxation. An organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502 or 503. . . . (c) (3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals), no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, (except as otherwise provided in subsection (6)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

29 CFR § 516.27:

"Board, lodging, or other facilities" under section 3(m) of the Act. (a) In addition to keeping other records required by the regulations in this part, an employer who makes deductions from the wages of his employees for "board, lodging, or other facilities" (as these terms are used in sec. 3(m) of the Act) furnished to them by the employer or by an affiliated person, or who furnishes such "board, lodging, or other facilities" to his employees as an addition to wages, shall maintain and preserve records substantiating the cost of furnishing each class of facility except as noted in paragraph (c) of this section. Separate records of the cost of each item furnished to an employee need not be kept. The requirement may be met by keeping combined records of the costs incurred in furnishing each class of facility, such as housing, fuel, or merchandise furnished through a company store or commissary. Thus, in the case of an employer who furnishes housing, separate cost records need not be kept for each house. The cost of maintenance and repairs for all the houses may be shown together. Original costs and depreciation records may be kept for groups of houses acquired at the same time. Costs incurred in furnishing similar or closely related facilities, moreover, may be shown in combined records. For example, if joint costs are incurred in furnishing both housing and electricity and the records are not readily separable, the housing and electricity together may be treated as a "class" of facility for recordkeeping purposes. Merchandise furnished at a company store may be considered as a "class" of facility and the records may show the cost of the operation of the store as a whole, or records showing the cost of furnishing the different kinds of merchandise may be maintained separately. Where cost records are kept for a "class" of facility rather than for each individual article furnished to employees, the records must also show the gross income derived from each such class of facility; e.g., gross rentals in the case of houses, total sales through the store or commissary, total receipts from sales of fuel, etc. (1) Such records shall include itemized accounts showing the nature and amount of any expenditures entering into the computation of the reasonable cost, as defined in Part 531 of this chapter, and shall contain the data required to compute the amount of the depreciated investment in any assets allocable to the furnishing of the facilities, including the date of acquisition or construction, the original cost, the rate of depreciation and the total amount of accumulated depreciation on such assets. If the assets include merchandise held for sale to employees, the records should contain data from which the average net investment in inventory can be determined. (2) No particular degree of itemization is prescribed. The amount of detail shown in these accounts should be consistent with good accounting practices, and should be sufficient to enable the Administrator or his representative to verify the nature of the expenditure and the amount by reference to the basic records which must be preserved pursuant to § 516.6(c) (3). (b) If additions to or deductions from wages paid (1) so affect the total cash wages due in any workweek (even though the employee actually is paid semimonthly) as to result in the employee receiving less in cash than the applicable minimum hourly wage, or (2) if the employee works in excess of the applicable maximum hours standard and (i) any addition to the wages paid are a part of his wages, or (ii) any deductions made are claimed as allowable deductions under sec. 3(m)

of the Act, the employer shall maintain records showing those additions to or deductions from wages paid on a workweek basis. (For legal deductions not claimed under sec. 3(m) and which need not be maintained on a workweek basis, see §§ 531.38 to 531.40 of this chapter.) (c) The records specified in this § 516.27 are not required with respect to an employee in any workweek in which he is not subject to the overtime provisions of the Act and receives not less than the applicable statutory minimum wage in cash for all hours worked in that workweek. (The application of section 3(m) of the Act on nonovertime weeks is discussed in § 531.36 of this chapter.)

29 CFR § 516.7(b):

Place for keeping records and their availability for inspection. (b) Inspection of records. All records shall be open at any time to inspection and transcription by the Administrator or his duly authorized and designated representative.

29 CFR § 516.8:

Computations and reports. Each employer required to maintain such extension, recomputation, or transcription of his records and shall submit to the Wage and Hour Division such reports concerning persons employed and the wages, hours, and other conditions and practices of employment set forth in his records as the Administrator or his duly authorized and designated representative may request in writing.

29 CFR § 531.3:

General determination of "reasonable cost". (a) The term "reasonable cost" as used in section 3(m) of the Act is

hereby determined to be not more than the actual cost to the employer of the board, lodging, or other facilities customarily furnished by him to his employees. (b) "Reasonable cost" does not include a profit to the employer or to any affiliated person. (c) Except whenever any determination made under § 531.4 is applicable, the "reasonable cost" to the employer of furnishing the employee with board, lodging, or other facilities (including housing) is the cost of operation and maintenance including adequate depreciation plus a reasonable allowance (not more than 5½ percent) for interest on the depreciated amount of capital invested by the employer: *Provided*, That if the total so computed is more than the fair rental value (or the fair price of the commodities or facilities offered for sale), the fair rental value (or the fair price of the commodities or facilities offered for sale) shall be the reasonable cost. The cost of operation and maintenance, the rate of depreciation, and the depreciated amount of capital invested by the employer shall be those arrived at under good accounting practices. As used in this paragraph, the term "good accounting practices" does not include accounting practices which have been rejected by the Internal Revenue Service for tax purposes, and the term "depreciation" includes obsolescence. (d) (1) The cost of furnishing "facilities" found by the Administrator to be primarily for the benefit or convenience of the employer will not be recognized as reasonable and may not therefore be included in computing wages. (2) The following is a list of facilities found by the Administrator to be primarily for the benefit of convenience of the employer. The list is intended to be illustrative rather than exclusive: (i) Tools of the trade and other materials and services incidental to carrying on the employer's busi-

ness; (ii) the cost of any construction by and for the employer; (iii) the cost of uniforms and of their laundering, where the nature of the business requires the employee to wear a uniform.

29 CFR § 531.29:

Board, lodging, or other facilities. Section 3(m) applies to both of the following situations: (a) Where board, lodging, or other facilities are furnished in addition to a stipulated wage; and (b) where charges for board, lodging, or other facilities are deducted from a stipulated wage. The use of the word "furnishing" and the legislative history of section 3(m) clearly indicate that this section was intended to apply to all facilities furnished by the employer as compensation to the employee, regardless of whether the employer calculates charges for such facilities as additions to or deductions from wages.

29 CFR § 531.30:

"Furnished" to employee. The reasonable cost of board, lodging, or other facilities may be considered as part of the wage paid an employee only where customarily "furnished" to the employee. Not only must the employee receive the benefits of the facility for which he is charged, but it is essential that his acceptance of the facility be voluntary and uncoerced.

29 CFR § 531.31:

"Customarily" furnished. The reasonable cost of board, lodging, or other facilities may be considered as part of the wage paid an employee only where "customarily" furnished to the employee. Where such facilities are "furnished" to the employee, it will be considered a sufficient satisfaction of this requirement if the facilities are furnished regularly by the employer to his employees or if the same or similar facilities are customarily furnished by other employees engaged in the same or similar trade, business, or occupation in the same or similar communities. Facilities furnished in violation of any Federal, State, or local law, ordinance or prohibition will not be considered facilities "customarily" furnished.

29 CFR § 531.32(a):

"Other facilities." (a) "Other facilities", as used in this section, must be something like board or lodging. The following items have been deemed to be within the meaning of the term: Meals furnished at company restaurants or cafeterias or by hospitals, hotels, or restaurants to their employees; meals, dormitory rooms, and tuition furnished by a college to its student employees; housing furnished for dwelling purposes; general merchandise furnished at company stores and commissaries (including articles of food, clothing, and household effects); fuel (including coal, kerosene, firewood, and lumber slabs), electricity, water, and gas furnished for the noncommercial personal use of the employee; transportation furnished employees between their homes and work where the travel time does not constitute hours worked compensable under the Act and the transportation is not an incident of and necessary to the employment.

29 CFR § 531.33:

"Reasonable cost"; "fair value." (a) Section 3(m) directs the Administrator to determine "the reasonable cost

• • • to the employer of furnishing • • • facilities" to the employee, and in addition it authorizes him to determine "the fair value" of such facilities for defined classes of employees and in defined areas, which may be used in lieu of the actual measure of the cost of such facilities in ascertaining the "wages" paid to any employee. Subpart B contains three methods whereby an employer may ascertain whether any furnished facilities are a part of "wages" within the meaning of section 3(m): (1) An employer may calculate the "reasonable cost" of facilities in accordance with the requirements set forth in § 531.3; (2) an employer may request that a determination of "reasonable cost" be made, including a determination having particular application; and (3) an employer may request that a determination of "fair value" of the furnished facilities be made to be used in lieu of the actual measure of the cost of the furnished facilities in assessing the "wages" paid to an employee. (b) "Reasonable cost", as determined in §531.3 "does not include a profit to the employer or to any affiliated person". Although the question of affiliation is one of fact, where any of the following persons operate company stores or commissaries or furnish lodging or other facilities which they will normally be deemed "affiliated persons" within the meaning of the regulations: (1) A spouse, child, parent, or other close relative of the employer; (2) a partner, officer, or employee in the employer company or firm; (3) a parent, subsidiary, or otherwise closely connected corporation; and (4) an agent of the employer.

29 CFR § 541.118(a):

Salary basis. (a) An employee will be considered to be paid "on a salary basis" within the meaning of the regu-

lations if under his employment agreement he regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of his compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed. Subject to the exceptions provided below, the employee must receive his full salary for any week in which he performs any work without regard to the number of days or hours worked. This policy is also subject to the general rule than an employee need not be paid for any workweek in which he performs no work.

29 CFR § 779.212:

Enterprise must consist of related activities performed for a "common business purpose". The related activities described in section 3(r) as included in the statutory enterprise are those performed for a "common business purpose". The term "common business purpose" as used in the definition does not have a narrow concept and is not intended to be limited to a single business establishment or a single type of business. As pointed out above, retailing, wholesaling and manufacturing may, under certain circumstances be engaged in for a "common business purpose". An example was also cited where retailing and construction were performed for a common business purpose. On the other hand, it is clear that even a single individual or corporation may perform activities for different business purposes. Thus the reports of the House of Representatives cite, as an example of this, the case of a single company which owns several retail apparel stores and is also engaged in the lumbering business. It concludes that these activities are not part of a single enterprise.

29 CFR § 779.213:

What is a common business purpose. Generally, the term "common business purpose" will encompass activities whether performed by one person or by more than one person, or corporation, or other business organization, which are directed to the same business objective or to similar objectives in which the group has an interest. The scope of the term "enterprise" encompasses a single business entity as well as a unified business system which performs related activities for a common business purpose. What is a "common business purpose" in any particular case involves a practical judgment based on the facts in the light of the statutory provisions and the legislative intent. The answer ordinarily will be readily apparent from the facts. The facts may show that the activities are related to a single business objective. In such cases, it will follow that they are performed for a common business purpose. Where, however, the facts show that the activities are not performed as a part of such enterprise but for an entirely separate and unrelated business, they will be considered performed for a different business purpose and will not be a part of that enterprise. The application of these principles is considered in more detail in Part 776 of this chapter.

29 CFR § 779.214:

"Business" purpose. The activities described in section 3(r) are included in an enterprise only when they are performed for a "business" purpose. Activities of eleemosynary, religious, or educational organizations may be performed for a business purpose. Thus, where such organizations engage in ordinary commercial activities, such as operating a printing and publishing plant, the business

activities will be treated under the Act the same as when they are performed by the ordinary business enterprise. However, the nonprofit educational, religious, and eleemosynary activities will not be included in the enterprise unless they are of the types which the last sentence of section 3(r), as amended in 1966, declares shall be deemed to be performed for a business purpose under the prior act and are not so considered under the Act as it was amended in 1966 except for those activities listed in the last sentence of amended section 3(r).

S. Rept. No. 145, 87th Cong. 1st Sess. 41 (1961), reprinted in 1961 U. S. Code Cong. & Admin. News, p. 1660:

Further, in order for "related activities" to be part of an enterprise they must be performed for a "common business purpose". Eleemosynary, religious, or educational and similar activities of organizations which are not operated for profit are not included in the term "enterprise" as used in this bill. Such activities performed by non-profit organizations are not activities performed for a common business purpose.

S. Rept. No. 1487, 89th Cong. 2d Sess. (1966), reprinted in 1966 U. S. Code Cong. & Admin. News, p. 3027:

In section 3(r) of the present act the term "enterprise" is defined to mean related activities performed for a common business purpose. Eleemosynary, religious or educational and similar activities of organizations which are not operated for profit are not included in the term "enterprise" since they are not performed for a business purpose.

Office - Supreme Court, U.S.
FILED
JUL 26 1984
ALEXANDER L. STEVAS
CLERK

No. 83-1935

In the Supreme Court of the United States

OCTOBER TERM, 1984

TONY AND SUSAN ALAMO FOUNDATION, ET AL., PETITIONERS

v.

RAYMOND J. DONOVAN, SECRETARY OF LABOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

REX E. LEE
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

FRANCIS X. LILLY
Solicitor of Labor

KAREN I. WARD
Associate Solicitor

CHARLES I. HADDEN
Counsel for Appellate Litigation

BARBARA J. JOHNSON
Attorney
Department of Labor
Washington, D.C. 20210

QUESTION PRESENTED

Whether individuals who were totally dependent upon petitioners for their support and who worked in businesses owned and operated by petitioners with the expectation of being supported by them were petitioners' "employees" within the meaning of the Fair Labor Standards Act of 1938.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 48-63), as amended by a subsequent order (Pet. App. 64-67), is not yet reported. The memorandum and order of the district court (Pet. App. 1-40) is reported at 567 F. Supp. 556. A subsequent order modifying the original order of the district court (Pet. App. 42-45) is not reported.

JURISDICTION

The judgment of the court of appeals (Pet. App. 47) was entered on December 5, 1983. Petitions for rehearing were denied on March 1, 1984 (Pet. App. 68). The petition for a writ of certiorari was filed on May 25, 1984. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Tony and Susan Alamo Foundation is a California corporation that espouses an evangelistic philosophy and has operated numerous commercial ventures in four states (Pet. App. 1-5, 49, 51-52).[1] Petitioner Tony Alamo is President of the Foundation and directs its affairs and operations.[2] In carrying out the evangelistic and commercial purposes of the Foundation, petitioners utilized the services of "associates," individuals who subscribed to the Foundation's religious tenets and who performed most of the tasks necessary to the operation of the various businesses (*id.* at 6-7, 49-50). Although they did not expect compensation in the form of ordinary cash wages, the associates "expect[ed] the Foundation to provide them food, shelter, clothing, transportation and medical benefits" (*id.* at 8). In fact, "[t]he associates [were] entirely dependent upon the Foundation for long periods, in some cases several years" (*id.* at 7). Moreover, several former associates believed that their economic well-being had been tied to the Foundation's commercial profits; thus, "if the Foundation's businesses were successful, they would all prosper" (*id.* at 8).

2. On December 19, 1977, the Secretary of Labor filed an action against petitioners, alleging that they had violated

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[1]The Foundation's "extensive * * * and substantial" (Pet. App. 51) commercial ventures include, inter alia, the manufacture of clothing, records, and candy; the retail sale of clothing, candy, building materials, groceries, feed and farm supplies, sand, and gravel; the marketing of landscaping, record promotion, construction, vehicle repair, freight trucking, plumbing, and roofing construction services; and the operation of service stations and hog farms (*id.* at 2-5, 51-52).

[2]Until her death in 1982, petitioner Susan Alamo served as Secretary and Treasurer of the Foundation. Petitioner Larry LaRouche was Vice President of the Foundation at the time this litigation commenced, but no longer holds that office. Pet. App. 5-6, 49.

the minimum wage, overtime, and recordkeeping provisions of the Fair Labor Standards Act of 1938 (FLSA), 29 U.S.C. 206(b), 207(a), 211(c), 215(a)(2) and (5), with respect to more than 300 associates.[3] On December 13, 1982, following a bench trial, the district court issued a memorandum and order holding that petitioners had violated the FLSA's recordkeeping and minimum wage provisions and ordered injunctive and restitutionary relief. The district court found that the Foundation's businesses "operated * * * under common control for common business purposes * * * in competition with other commercial businesses" and therefore determined that they constituted an "enterprise" subject to the requirements of the FLSA (Pet. App. 35). See 29 U.S.C. 203(r). The court also found that the associates were "totally dependent upon the Foundation" for their subsistence and concluded that, as a matter of economic reality, the associates expected the Foundation to support them (Pet. App. 10, 37): "The associates contemplated they would be fed, clothed, sheltered and provided other forms of benefits as a result of their work at the Foundation's commercial businesses. Such benefits are simply wages in another form" (*id.* at 37). In addition, the court noted that several former associates expected to share in the profits of the Foundation's commercial ventures (*id.* at 8). Accordingly, the court ruled that the associates were petitioners' "employees" within the meaning of the FLSA, 29 U.S.C. 203(e)(1) and (g) (Pet. App. 37).[4]

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[3]The Secretary also charged petitioners with failing to compensate certain Foundation employees, who were not associates, at the proper overtime rate pursuant to 29 U.S.C. 207(a) (Pet. App. 29, 49). The district court made specific factual findings concerning the hours worked by each of those named employees (*id.* at 30-34), which, with one exception (*id.* at 66-67), the court of appeals upheld (*id.* at 49). Petitioners do not seek review of this portion of the case.

[4]The FLSA defines "employee" as "any individual employed by an employer," and defines "employ" as including "to suffer or permit to work." 29 U.S.C. 203(e)(1) and (g).

The district court also rejected petitioners' challenge to the constitutionality of the statute as applied to the employment of associates. The court held that application of the FLSA to the commercial activities of a nonprofit religious organization is rationally related to the statutory goal of protecting competitors against unfair competition; that there was no proof of discriminatory prosecution by the Secretary; and that application of the Act violated neither the Free Exercise Clause nor the Establishment Clause of the First Amendment. Pet. App. 35-36.

The district court enjoined petitioners from further violations of the FLSA (Pet. App. 43-44). In computing back wages due, the court ordered that all former associates and "all persons * * * who have worked in [specified] businesses of the Foundation" be advised of their eligibility to submit a claim to the Secretary (*id.* at 44). The court further instructed the Secretary to consider all claims and submit to the Court proposed findings "of back wages due each claimant * * * less applicable benefits" that had been provided by the Foundation (*ibid.*).

3. The court of appeals affirmed the district court's holding on liability, but vacated and remanded on the remedy question (Pet. App. 66). The court of appeals agreed that the Foundation's businesses "serve[d] the general public, in competition with other private entrepreneurs" and therefore constituted an "enterprise" under the FLSA (Pet. App. 52 & n.7). The court also held that the associates, who "expect[ed] to receive * * * [the] benefits of lodging, food, transportation, and medical care" (*id.* at 50), were Foundation employees (*id.* at 53).

The court of appeals rejected petitioners' constitutional arguments as well. It held that application of the FLSA to Foundation employees did not violate the Establishment Clause because the Act is "secular social legislation of an

economic character" (Pet. App. 56) that neither advances nor inhibits religious practice and does not foster excessive government entanglement with religion (*id.* at 56-60). By the same token, the court concluded that there was no Free Exercise Clause violation because "enforcement of wage and hour provisions cannot possibly have any direct impact on [petitioners'] freedom to worship and evangelize as they please" (*id.* at 60) and because the indirect impact was merely financial (*id.* at 60-61). In short, the court stated, "[t]here is surely no constitutional right, under the religion clauses of the First Amendment, to pay substandard wages" (*id.* at 59).

Although the court of appeals upheld the district court's ruling that petitioners had violated the FLSA, it vacated the district court's order regarding the method of calculating back wages due employees. Specifically, the court rejected the district court's formula, which had required associates to initiate restitution proceedings (Pet. App. 61-63, 65). Instead, the court of appeals held that, because petitioners had failed to provide the relevant records of hours worked, the district court should utilize " 'the most accurate basis possible under the circumstances' " for calculating back wages due (*id.* at 65, quoting *Anderson* v. *Mt. Clemens Pottery Co.*, 328 U.S. 680, 688 (1948)). Therefore, the court of appeals remanded the case to the district court "for determination of the amounts of wages owing, such determination to be based either upon the present record or as supplemented by such additional evidence as the District Court may afford the parties an opportunity to offer" (Pet. App. 66).[5]

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[5]The court of appeals also authorized the district court "to develop the record further" with respect to the status of one of the non-associate employees (see note 3, *supra*) (Pet. App. 66-67).

ARGUMENT

1. Petitioners contend (Pet. 12-26) that the court of appeals erred in holding that the Foundation associates were "employees" covered by the FLSA. At the outset, we note that it would be premature for this Court to review that contention at this time. Although the court affirmed petitioners' liability for violations of the FLSA, it remanded to the district court for further factfinding and calculation of back wages due. Should petitioners be dissatisfied with the ultimate determination of the back wages issue, they can seek appellate review at that time, and the questions presented here would still be available for review by this Court. Accordingly, there is no reason for the Court to depart from its usual practice of awaiting the completion of proceedings in the district court, rather than reviewing an interlocutory decision of the court of appeals. See *Brotherhood of Locomotive Firemen & Enginemen* v. *Bangor & A.R.R.*, 389 U.S. 327, 328 (1967); *Hamilton-Brown Shoe Co.* v. *Wolf Brothers & Co.*, 240 U.S. 251, 258 (1916). In any case, petitioners' contentions are without merit.

2.a. The thrust of petitioners' argument is that the courts below erred in holding that the Foundation associates were employees covered by the FLSA, rather than non-covered volunteers (see Pet. 16-22). Petitioners (*id.* at 14) and the Secretary both agree with the distinction set forth in *Walling* v. *Portland Terminal Co.*, 330 U.S. 148, 152 (1947): an employee "contemplate[s] compensation" for the work he performs, while a volunteer works "without promise or expectation of compensation, * * * solely for his personal purpose or pleasure." Thus, petitioners' objection here is not to the general legal principles applied by the courts below, but only to their application to the particular facts of this case. Specifically, petitioners dispute the district court's factual finding, affirmed by the court of appeals, that the associates expected compensation. But that finding of fact

plainly is supported by the associates' total dependency on the Foundation (see *Mitchell* v. *Pilgrim Holiness Church Corp.*, 210 F.2d 879, 884 (7th Cir.), cert. denied, 347 U.S. 1013 (1954)), as well as by the expectation they had of sharing in the Foundation's profits.[6] Further review by this Court of this finding of fact is unwarranted. See *Berenyi* v. *Immigration Director*, 385 U.S. 630, 635 (1967); *Graver Tank & Mfg. Co.* v. *Linde Air Products Co.*, 336 U.S. 271, 275 (1949).[7]

b. Contrary to petitioners' contention (Pet. 12, 22), the decision below is fully in accord with this Court's decision in *Walling* v. *Portland Terminal Co.*, *supra*. It is true, of course, that the Foundation associates were held to be

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[6]An individual's legal status as an employee is determined by examining the factual context or "economic reality" of the individual's relationship with the employer (see *Goldberg* v. *Whitaker House Coop.*, 366 U.S. 28, 33 (1961)), rather than merely accepting the label either party may affix to that relationship. See *Rutherford Food Corp.* v. *McComb*, 331 U.S. 722, 729-730 (1947). Because the economic reality here was that the associates were totally dependent on the Foundation for food, shelter, clothing, transportation, and medical benefits, which is clearly compensation—albeit not in ordinary wages — petitioners' reliance (Pet. 16-19) on the testimony of the associates themselves that they intended to "volunteer" their services is misplaced.

[7]Petitioners also suggest (Pet. 21) that the district court erroneously "disregarded the voluntary nature of the associates' work simply because some of them * * * worked in activities customarily considered 'commercial.' " This is an incomplete statement of the reasoning below. In fact, the district court found that the associates performed practically *all* of the work of the Foundation's commercial businesses and that the associates were employees *because they expected compensation* for that work. That the businesses in which they worked were "engaged in ordinary commercial activities in competition with other commercial businesses" (Pet. App. 35) was relevant only to the court's conclusion that the businesses were part of an "enterprise" within the meaning of 29 U.S.C. 203(r). Indeed, the Secretary has never contended, and the decisions below plainly do not suggest, that the associates' purely religious, non-commercial activities, such as witnessing and preaching, are covered under the FLSA. See 29 C.F.R. 779.214.

employees in this case and the trainees in *Portland Terminal* were held not to be covered by the FLSA. In both cases, however, the courts used the individuals' expectation of compensation as the touchstone in determining employee status. The difference in result is attributable to the difference in the underlying facts. The courts below found that the associates expected compensation for the services they provided the Foundation, but the *Portland Terminal* Court found that there was no evidence that the trainees there "ever expected to receive • • • any remuneration for the training period" (330 U.S. at 150). Moreover, the Court in *Portland Terminal* relied heavily on the unchallenged finding that the employer there received no advantage from the work done by the trainees (see *id.* at 149-150, 153). Here, the situation is quite different because the Foundation associates performed "[p]ractically all of the work" of petitioners' commercial businesses (Pet. App. 7).

By the same token, petitioners' allegations of a confict in the courts of appeals is without foundation. In both cases relied upon by petitioners (Pet. 12, 14-16, 21-22), *Turner* v. *Unification Church*, 473 F. Supp. 367 (D.R.I. 1978), aff'd, 602 F.2d 458 (1st Cir. 1979), and *Rogers* v. *Schenkel*, 162 F.2d 596 (2d Cir. 1947), the courts found that, under the *Portland Terminal* test, the facts did not indicate that the individuals involved expected compensation. In *Turner*, the district court dismissed the case because, inter alia, the plaintiff's "complaint indicate[d] that she never contemplated any monetary or tangible compensation" (473 F. Supp. at 377). In *Rogers*, the court of appeals simply found that an individual who "intended that his services were to be rendered without compensation" (162 F.2d at 597) and refused to accept compensation was not an employee within the meaning of the FLSA (*id.* at 597-598). Like the lower courts in this case, the courts in both *Turner* and *Rogers* correctly applied the legal standard set forth in *Portland*

Terminal to the facts at hand. See also *Mitchell* v. *Pilgrim Holiness Church Corp.*, *supra* (church workers who expected compensation covered by FLSA).

c. Petitioners' contention (Pet. 22-25) that the decision of the court of appeals will discourage persons from volunteering their services is wholly unfounded. The decision below turns on the particular facts of this case; the associates were held to be employees because they expected compensation for their services. The court of appeals explicitly recognized, however, that true volunteers, who work "without promise or expectation of compensation" (see *Walling* v. *Portland Terminal Co.*, 330 U.S. at 152), are not employees covered by the FLSA. Thus, the decision below poses no threat to the voluntary service of people like the "prosperous lawyer ringing the bell for the Salvation Army on the street at Christmas time for a few hours" or the "persons caring for children on Sunday during church services" (see Pet. App. 50).[8]

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[8]Petitioners state (Pet. 25-26) that the Secretary's enforcement of the FLSA against them contravenes constitutional principles, but make no argument in support. The courts below considered and correctly rejected this contention (see Pet. App. 35-36, 53-61). See also *United States* v. *Lee*, 455 U.S. 252 (1982). Petitioners point to no flaw in the analysis of the constitutional issues below, and there is no reason for this Court to review their undeveloped assertion of error.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

REX E. LEE
Solicitor General

FRANCIS X. LILLY
Solicitor of Labor

KAREN I. WARD
Associate Solicitor

CHARLES I. HADDEN
Counsel for Appellate Litigation

BARBARA J. JOHNSON
Attorney
Department of Labor

JULY 1984

DOJ-1984-07

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CLERK

No. 83-1935

In The

Supreme Court of the United States

October Term, 1983

TONY AND SUSAN ALAMO FOUNDATION, TONY ALAMO, SUSAN ALAMO, AND LARRY LAROUCHE,

Petitioners,

v.

RAYMOND J. DONOVAN, SECRETARY OF LABOR,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITIONERS' REPLY BRIEF

Roy Gean, Jr.
Gean, Gean & Gean
First America Building
Suite 500, 524 Garrison Avenue
Fort Smith, Arkansas 72901-2519
501-783-1124

Attorneys for Petitioners

COCKLE LAW BRIEF PRINTING CO., (800) 835-7427 Ext. 333

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ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITIONERS' REPLY BRIEF

REPLY TO ARGUMENT OF RESPONDENT

The Petitioner will address herein three points raised by the Respondent in his Argument.

1. Respondent bases his argument upon various statements made by *former* associates of the Foundation. Such statements, however, are unreliable and were cor-

rectly recognized as such by the District Court, which declare that the "former associates had become disillusioned with the Foundation and Tony Alamo".[1] (Pet. App. 7.) The testimony of the *present* associates of the Foundation directly contradicted the statements of the former associates upon which the Respondent relies. Furthermore, various statements of former associates relied upon by the Respondent were questioned by the District Court as it found such statements to be "elicited in response to leading questions on depositions". (Pet. App. 9.) Thus, Respondent's reliance upon statements made by the former associates is seriously misplaced.

2. One of the salient issues in this case is whether the associates are employees as defined by the Fair Labor Standards Act. The Respondent's position on this issue is wholly based upon the District Court's finding that:

> Although the associates expected no compensation in the form of ordinary wages, they did expect the Foundation to provide them food, shelter, clothing, transportation, and medical benefits. (Pet. App. 8.)

This finding has no support in the record and is clearly erroneous.

As agreed in a pre-trial order of the District Court, the Petitioners called three associates to testify concerning their relationship with the Foundation, with the understanding that their testimony would be representative of all the associates of the Foundation. The Respondent was given the opportunity to call any associate who would

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[1] Nevertheless, even former associates were found to be "volunteers" at the time they were at the Foundation by the District Court.

testify differently from the three representative associates. The Respondent called no one to contradict the testimony of the Petitioners' representative associates. *Each such associate testified that he or she never expected any type of compensation.* (See, Pet. Brief, 12-21).

The Respondent argues that the associates *expected* compensation for their labor. Yet, when the associates were asked what their expectations were, their testimony was contrary to the position of the Respondent and was subsequently ignored by the District Court and is now bypassed by the Respondent in his argument. If expectation is a consideration, which both the Respondent and the Petitioners believe it is, then the associates' testimony about their expectations should not be ignored.

In an attempt to support his expectation argument, the Respondent states that the associates were totally dependent upon the Foundation. The record, however, does not support this position. In fact, the record contradicts such an argument. As stated by the representative associates, it was not uncommon for the associates to go outside the Foundation to secure jobs. As stated by Bill Levy:

> Yes. A few of us would get together and possibly decide to go out and get a job. It may be planting trees or it may be—. I worked at Flanders Factory in Fort Smith, Arkansas. (Tr. Vol. II p. 78.)

As stated by another representative associate, Ann Elmore, during the early portion of her association with the Foundation, she stated: "I had some money from an investment that I lived off of, and I had a very small amount of child support." (Tr. Vol. II, p. 126.)

Consequently, the record does not support the argument or finding that the associates were totally dependent upon the Foundation for their existence.

Assuming, for the sake of argument only, that the District Court was correct in finding that the associates expected food, shelter, clothing, transportation, and medical benefits, the decision of the Court of Appeals for the Eighth Circuit in this case creates a conflict between it and the Court of Appeals for the First Circuit as set forth in *Turner v. Unification Church*, 473 F. Supp. 367 (D. R. I. 1978), aff'd., 602 F. 2d 458 (1st Cir. 1979). The *Turner* decision was based upon a finding that Turner "received no monetary compensation, but was provided with food and shelter". (Id. 473 F.Supp. at 371). Despite this finding, the District Court, which was affirmed by the First Circuit, concluded that Turner was not an employee under the Fair Labor Standards Act.

3. The Respondent, in an attempt to persuade this Court to deny the Petition for Writ of Certiorari, states:

> Should Petitioners be dissatisfied with the ultimate determination of the back wages issue, they can seek appellant review at that time, and the questions presented here would still be available for review by this Court. (Resp. Brief, p. 6.)

It is obvious from this appeal that the issues in dispute primarily concern the lower court's finding that the associates are "employees", and that the application of the Fair Labors Standards Act is not violative of the

Free Exercise or Establishment Clause of the First Amendment to the United States Constitution.[1]

This is the first time during the appellate procedure of this action that any statement has been made or position asserted wherein it is said that the decisions involved are merely "interlocutory" and not final. In fact, the Secretary filed his own appeal from the District Court. The issue as to whether the associates are employees or volunteers issues involving serious constitutional questions are ripe for review by this Court. On these issues, we are not "awaiting the completion of proceedings" as asserted by the Respondent.

CONCLUSION

WHEREFORE, petitioner prays that a Writ of Certiorari issue from this Honorable Court to review the decision of the United States Court of Appeals for the Eighth Circuit in Raymond J. Donovan, Secretary of Labor, United States Department of Labor v. Tony and Susan Alamo Foundation, Tony Alamo, Susan Alamo, and Larry LaRouche. In the event that the Petition is

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[1] The Respondent in footnote 8 of its Brief in Opposition contends that Petitioners have pointed to no flaw in the analysis of the constitutional issues below. Petitioners deny this contention and refer this Court to pages i, 25, and 26 of the Petition for Writ of Certiorari filed herein.

granted, Petitioners pray that the decision of the Court below be reversed.

Respectfully submitted

GEAN, GEAN & GEAN
First America Building
Suite 500, 524 Garrison Avenue
Fort Smith, Arkansas 72901

BY: ROY GEAN, JR.

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ALEXANDER L. STEVAS,

No. 83-1935

In The

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October Term, 1984

TONY AND SUSAN ALAMO FOUNDATION, TONY ALAMO, SUSAN ALAMO, AND LARRY LAROUCHE,

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vs.

RAYMOND J. DONOVAN, SECRETARY OF LABOR,

Respondent.

On Writ Of Certiorari To The United States Court of Appeals For The Eighth Circuit

JOINT APPENDIX

REX E. LEE
SOLICITOR GENERAL
DEPARTMENT OF JUSTICE
WASHINGTON, D.C. 20530
(202) 633-2217

FRANCIS LILLY
SOLICITOR OF LABOR

KAREN I. WARD
ASSOCIATE SOLICITOR

CHARLES I. HADDEN
COUNSEL FOR APPELLATE LITIGATION

BARBARA J. JOHNSON
ATTORNEY
DEPARTMENT OF LABOR
WASHINGTON, D.C. 20210
ATTORNEYS FOR RESPONDENT

ROY GEAN, JR.
GEAN, GEAN & GEAN
FIRST AMERICA BUILDING
SUITE 500
524 GARRISON AVENUE
FORT SMITH, ARKANSAS 72901
(501) 783-1124
ATTORNEYS FOR PETITIONERS

PETITION FOR CERTIORARI FILED MAY 25, 1984.
CERTIORARI GRANTED OCTOBER 15, 1984.

COCKLE LAW BRIEF PRINTING CO., (800) 835-7427 Ext. 333

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RELEVANT DOCKET ENTRIES UP TO THE FILING OF THE PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Raymond J. Donovan, Secretary of Labor,
United States Department of Labor
v. Tony and Susan Alamo Foundation,
Tony Alamo, Susan Alamo, and Larry LaRouche

United States District Court for the
Western District of Arkansas No. CIV-77-2183

19 Dec	1977	Complaint filed
9 Jan	1978	Defendant's Motion for More Definite Statement filed
11 Sep	1979	Order Denying Motion for More Definite Statement filed
19 Nov	1979	Defendant's Motion to Dismiss filed
15 Jan	1980	Order Denying Motion to Dismiss filed
21 Jan	1980	Defendant's Answer filed
31 Jan	1980	Defendant's Answers to First Set of Interrogatories filed
22 Feb	1980	Amendment to Defendant's Answers to First Set of Interrogatories filed
19 Jan	1981	Plaintiff's Motion for a Preliminary Injunction filed
26 Jan	1981	Response to and Motion to Dismiss Plaintiff's Motion for a Preliminary Injunction and Affidavit filed
30 Mar	1981	Preliminary Injunction filed
2 Apr	1981	Plaintiff's List of Defendant Employees filed

6 Apr 1981 Defendant's List of Volunteers or Associates and Defendant's List of Employees filed

22 Jul 1981 Motion to File Amended Answer, filed

24 Jul 1981 Ordder Granting Motion to File Amended Answer filed

6 Aug 1981 Defendant's Amendment of Answer filed

28 Apr 1982 Court trial begins

29 Apr 1982 Court trial continues

30 Apr 1982 Court trial continues, case submitted unless further discovery is desired. Parties to advise by 5/28/82 whether they desire to offer additional proof

13 Dec 1982 Memorandum and Order (dated 12/10/82) filed

23 Dec 1982 Defendant's Notice of Appeal filed

3 Jan 1983 Appellant's Designation of Record and Statement of Issues and Appellant's Order for Transcript filed

13 Jan 1983 Plaintiff's Motion for Clarification and Amendment of Memorandum Decision and for Entry of Judgment filed

21 Jan 1983 Defendant's-Appellant's Response to Plaintiff's Motion for Clarification and Amendment of Memorandum Decision and for Entry of Judgment

7 Feb 1983 Plaintiff's Designation of Additional Parts to be Included in the Record on Appeal and Objection to Defendant's Designation

9 Feb 1983 Order (Granting Plaintiff's Motion for Clarification and Amendment of Memorandum Decision)

9 Feb 1983 Judgment filed

9 Feb 1983 Plaintiff's Notice of Appeal filed

15 Mar 1983 Defendant's Revised Designation of Record filed

28 Mar 1983 Plaintiff's Supplemental Designation of the Record filed

29 Mar 1983 Designated Record (forwarded to Court Clerk of United States Court of Appeals for the Eighth Circuit, St. Louis)

United States Court of Appeals
for the Eighth Circuit

No. 82-2549 WA and 83-1463 WA

5 Dec 1983 Decision, United States Court of Appeals for the Eighth Circuit filed

27 Feb 1984 Order (of Amendment) entered

1 Mar 1984 Order (Denying Petitions for Rehearing) entered

12 Mar 1984 Order (Denying Motion to Stay Issuance Pending Certiorari Proceedings) dated

14 Mar 1984 Judgment dated (entered in the United States District Court for the Western District of Arkansas on March 14, 1984)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

Civil Action
No. 77-2183

RAY MARSHALL, Secretary of Labor,
United States Department of Labor,

Plaintiff,

V.

TONY AND SUSAN ALAMO FOUNDATION,
TONY ALAMO,
SUSAN ALAMO, and
LARRY LAROUCHE,

Defendants.

COMPLAINT

(Filed December 19, 1977)

Plaintiff, Ray Marshall, Secretary of Labor, United States Department of Labor, brings this action to enjoin defendants from violating the provisions of sections 15(a)(2), and 15(a)(5) of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. Sec. 201, et seq., hereinafter referred to as the Act, and to restrain said defendants from withholding payment of minimum wages and overtime compensation found by the court to be due employees under the Act.

I

Jurisdiction of this action is conferred upon the court by section 17 of the Act, 29 U.S.C. Sec. 217.

II

A. Defendant Tony and Susan Alamo Foundation is now and at all times hereinafter mentioned was, a California corporation with places of business and doing business in Crawford County, Arkansas, within the jurisdiction of this court.

B. Defendant Tony Alamo is a resident of Crawford County, Arkansas, within the jurisdiction of this court, where he is, and at all times hereinafter mentioned was, President and Treasurer of the defendant corporation and actively managers. supervises and directs the business affairs and operations of said corporation. He acts and has acted, directly or indirectly, in the interest of said corporation in relation to its employees and is therefore an employer of said employees within the meaning of the Act.

C. Defendant Susan Alamo is a resident of Crawford County, Arkansas, within the jurisdiction of this court, where she is, and at all times hereinafter mentioned was, Secretary of the defendant corporation and actively manages, supervises and directs the business affairs and operations of said corporation. She acts and has acted, directly or indirectly, in the interest of said corporation in relation to its employees and is therefore an employer of said employees within the meaning of the Act.

D. Defendant Larry LaRouche is a resident of Crawford County, Arkansas, within the jurisdiction of this court, where he is, and at all times hereinafter mentioned was, Vice-President of the defendant corporation and actively manages, supervises and directs the business affairs and operations of said corporation. He acts and has acted, directly or indirectly, in the interest of said cor-

poration in relation to its employees and is therefore an employer of said employees within the meaning of the Act.

III

At all times hereinafter mentioned, the defendant corporation has been an enterprise within the meaning of section 3(r) of the Act, 29 U.S.C. Sec. 203(r), in that it has been, through unified operation or common control, engaged in the performance of related activities for a common business purpose.

IV

At all times hereinafter mentioned, the defendant corporation has been an enterprise engaged in commerce or in the production of goods for commerce within the meaning of section 3(s)(1) of the Act, 29 U.S.C. Sec 203(s)(1), in that said enterprise has had employees engaged in commerce, or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person and in that said enterprise has had and has an annual gross volume of sales made or business done of not less than $250,000 (exclusive of excise taxes at the retail level which are separately stated).

V

During the period since at least January 1, 1975, defendants have violated and are violating the provisions of sections 6(b) and 15(a)(2) of the Act, 29 U.S.C. Sec. 206(b) and Sec. 215(a)(2), by paying employees employed in an enterprise engaged in commerce or in the production of goods for commerce, within the meaning of the Act as aforesaid, at rates less than $2.00 per hour in 1975, $2.20 per hour in 1976, and $2.30 per hour since January 1, 1977.

VI

During the period since at least January 1, 1975, defendants have violated and are violating the provisions of sections 7(a) and 15(a)(2) of the Act, 29 U.S.C. Sec. 207(a) and Sec. 215(a)(2), by employing employees in an enterprise engaged in commerce or in the production of goods for commerce within the meaning of the Act as aforesaid, for workweeks longer than forty hours without compensating such employees for their employment in excess of forty hours per week at rates not less than one and one-half times the regular rates at which they were employed.

VII

As a result of the aforesaid violations of the Act, minimum wages and overtime compensation have been unlawfully withheld by the defendants from their employees.

VIII

During the period since at least January 1, 1975, defendants, employers subject to certain provisions of the Act, have violated the provisions of sections 11(c) and 15(a)(5) of the Act, 29 U.S.C. Sec. 211(c) and Sec. 215(a)(5), in that they have failed to make, keep and preserve adequate and accurate records of their employees and of the wages, hours, and other conditions and practices of employment maintained by them as prescribed by the regulations of the Administrator issued pursuant to sections 11(c) and 15(a)(5) of the Act, 29 U.S.C. Sec. 211(c) and Sec. 215(a)(5), and found in Title 29, Chapter VI, Code of Federal Regulations, Part 516 in that defendants' records fail to show, among other things, the hours

worked each day and the total hours worked each workweek by many of their employees.

IX

Defendants have violated the Act as hereinabove alleged. A judgment enjoining the violations hereinabove alleged and restraining the withholding of minimum wages and overtime compensation found to be due defendants' employees is specifically authorized by section 17 of the Act, 29 U.S.C. Sec. 217.

WHEREFORE, cause having been shown, plaintiff prays for judgment permanently enjoining defendants, their agents, servants, employees and all those persons in active consert or participation with them from violating the provisions of sections 15(a)(2) and 15(a)(5) of the Act, 29 U.S.C. §§ 215(a)(2) and 215(a)(5), and such other and further relief as may be necessary and appropriate, including the restraint of withholding of payment of minimum wages and overtime compensation found by the court to be due employees under the Act together with interest thereon at the rate of nine percent per annum from the date such back wages became due until paid, and costs of this action.

Carin Ann Clauss
Solicitor of Labor

Ronald M. Gaswirth
Regional Solicitor

William E. Everheart
Counsel for Employment Standards

By:

/s/ Robert A. Fitz
Attorney

Attorneys for Ray Marshall, Secretary of Labor, United States Department of Labor,
Plaintiff

POST OFFICE ADDRESS:

Ronald M. Gaswirth
Office of the Solicitor
U.S. Department of Labor
555 Griffin Square—Suite 501
Dallas, Texas 75202

Telephone:
214-749-3482

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

CASE NO. 77-2183

RAY MARSHALL, Secretary of Labor,
United States Department of Labor

Plaintiff

vs.

TONY AND SUSAN ALAMO FOUNDATION
TONY ALAMO, SUSAN ALAMO, AND
LARRY LAROUCHE,

Defendants

ANSWER

(Filed January 21, 1980)

Comes now the Defendants and for their Answer to the Plaintiff's Complaint herein denies generally and specifically each and every and all of the allegations set forth

in said Complaint except so much of the same as may hereinafter be specifically admitted and require the Plaintiff to present strict proof of such allegations.

I

FOR A FIRST, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to the Complaint, the Defendants allege that by Plaintiff's failure to name any employee for which Plaintiff allegedly represents as a party plaintiff to this action or otherwise name them as provided by law, and by Plaintiff's failure to secure written consents of any such employee as required by 29 U.S.C.A. sec. 216(b) [Fair Labor Standards Act], this action is not considered commenced in the case of any individual claimant for whom the Plaintiff is allegedly bringing this lawsuit, and thus this Court has no jurisdiction over the subject matter and parties of this alleged cause of action to the extent that said Complaint prays for the recovery of back wages allegedly owed the "employees" of the Defendants.

II

FOR A SECOND, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to the Complaint, the Defendants allege that the alleged action set forth in said Complaint is barred by the Statute of Limitations, which limits this purported cause of action for unpaid minimum wages and unpaid overtime compensation to two years after the alleged cause of action accrued.

III

FOR A THIRD, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to the Complaint, the Defendants allege that said Complaint fails to state a claim against the Defendants upon which relief can be granted.

IV

FOR A FOURTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to the Complaint, the Defendants allege that this lawsuit is a further example of the Plaintiff's application of the Fair Labor Standards Act in such a wilfully unequal and oppressive manner as to amount to a denial of the Government of that equal protection of the laws which is secured to the Defendants, as to all other persons, by the Constitution of the United States.

V

FOR A FIFTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to the Complaint the Defendants allege that the Fair Labor Standards Act as applied to the Defendant is illegal, unconstitutional, and void in that it is contrary to the free exercise of religion clause of the First Amendment to the Constitution of the United States.

VI

FOR A SIXTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to the Complaint the Defendants allege that the Fair Labor Standards Act on its face suggests potentially unconstitutional applications to persons who are citizens of the United States and who are exercising their religious beliefs guaranteed to them by the First Amendment to the Constitution of the United States and consequently, that to the Defendants' harm, this Act creates a chilling effect upon constitutionally protected religious activity and thus is unconstitutionally overbroad under the aforesaid Amendment.

WHEREFORE, Defendants pray judgment that the Complaint be dismissed, that Defendants have their costs incurred herein, and for such other and further relief as to the Court may seem just.

Tony and Susan Alamo Foundation,
Tony Alamo, Susan Alamo, and
Larry LaRouche
Defendants

Gean, Gean & Gean
Attorneys for Defendants
600 First Federal Building
Fort Smith, Arkansas 72901
By /s/ Roy Gean, Jr.

CERTIFICATE OF MAILING

I certify that I have mailed a true copy of the above and foregoing Answer to Mr. Robert A. Fitz, Office of the Solicitor, U.S. Department of Labor, 55 Griffin Square —Suite 501, Dallas, Texas, 75202, attorney of record for the plaintiff, on this 21st day of January, 1980.

/s/ Roy Gean, Jr.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

Civil Action File NO. 77-2183

RAY MARSHALL, Secretary of Labor,
United States Department of Labor,

Plaintiff,

v.

TONY AND SUSAN ALAMO FOUNDATION,
et al.,

Defendant.

DEFENDANT'S ANSWERS TO FIRST SET OF INTERROGATORIES TO DEFENDANT

(Filed January 31, 1980)

Comes now the Defendant, Tony and Susan Alamo Foundation, and for its Answers to Plaintiff's First Set of Interrogatories to Defendant, alleges and states:

• • •

INTERROGATORY NO. 12: For each place of business Tony and Susan Alamo Foundation has owned or operated since January 1, 1975, please state:

(a) the trade name of such place of business (such as, Alamo Restaurant),

(b) the type of business conducted at such place of business (such as, restaurant),

(c) the street address of such place of business (such as, United States Highway 71, Alma, Arkansas),

(d) The period of time it owned or operated such place of business (such as, January 1, 1975 to present), and,

(e) for each person in charge of such place of business, his name, last known address, the occupation in which he was employed, and the period of time he was in charge of such place of business.

ANSWER: See below.

12 (a):	12 (b):	12 (c):	12 (d):
Alamo Restaurant	restaurant	Hwy. 71 No. Alma, AR	10/21/75-present
Alamo Kerr McGee	service station	Hwy. 71 No. Alma, AR	7/ 7/75-present
Alamo DX	service station	Hwy. 71 No. Alma, AR	7/29/75-present
Alamo Auto Repair	vehicle repair	Hwy. 71 No. Alma, AR	6/ 1/77-present
Alamo Discount Grocery	grocery store	Hwy. 71 No. Alma, AR	7/ 5/76-present
Alamo of Nashville in Alma	clothing store	Hwy. 71 No. Alma, AR	3/13/76-present
Alamo Ready Mix	ready-mix	Hwy. 64 Alma, AR	7/ 1/79-present
Alamo Bandito	clothing store	Hwy. 71 No. Alma, AR	4/2/76 to 5/30/78
Alamo Exxon	gas station	Sierra Hwy, and Friendly Valley Rd., Saugus, CA	10/27/73 to 5/6/76
Alamo Record Company	producing and selling of records	P.O. Box 398 Alma AR	6/ 1/71-present
Alamo of Nashville	clothing	325 Broadway Nashville, TN	9/ 1/74-present
Nashville Today Distribution	buy and sell personal property	P.O. Box 24509 Nashville, TN	10/15/74-present
Tennessee Boy Distribution	buy and sell personal property	P.O. Box 24509 Nashville, TN	10/15/74-present
Fort Smith Mobile Nursery	nursery	Hwy. 71 No. Alma, AR	4/10/75-present
Alamo Shoppers Emporium	bldg. materials	Alma, AR	6/15/75-present
Alamo Candy Company	candy sales	Alma, AR	2/21/76-present
Alamo Construction	construction	Alma, AR	1/ 5/77-present
Alamo Telegraph	western union	Alma, AR	3/14/77-present

Answer to Interrogatory No. 12 (cont.)

12 (a):	12 (b):	12 (c):	12 (d):
Alamo Freight	freight-trucking	Alma, AR	5/10/78-present
North American Leasing	leasing	Alma, AR	10/20/78-present
South West Business Management	record keeping	Alma, AR	1/20/78-present
Tempe Towers	motel	2010 E. Apache Tempe, Arizona	3/15/79-present
Bosco Feed and Farm Equipment	feed and farm supply	Alma, AR	6/27/79-present
Hartford Advertising	advertising	Alma, AR	1/ 5/71-present
Alamo Farms	hog farm	Alma, AR	6/27/79-present

Answer to 12(e): Tony Alamo, P.O. Box 398, Alma, Arkansas 72921, since the inception of the Tony and Susan Alamo Foundation.

DATED this 31st day of January, 1980.

TONY AND SUSAN ALAMO FOUNDATION

By /s/ Tony Alamo
TONY ALAMO, President

STATE OF ARKANSAS)
) SS
COUNTY OF SEBASTIAN)

Subscribed and sworn to before me, a Notary Public, this 31st day of January, 1980.

/s/ Nina Dell Williams
Notary Public

My Commission expires:
August 22, 1981

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

Civil Action File No. 77-2183

RAY MARSHALL, Secretary of Labor
United States Department of Labor,

Plaintiff,

v.

TONY AND SUSAN ALAMO FOUNDATION,
et al.,

Defendant.

AMENDMENT TO DEFENDANT'S ANSWERS TO FIRST SET OF INTERROGATORIES TO DEFENDANT

(Filed February 22, 1980)

Comes now the defendant, Tony and Susan Alamo Foundation, and for its Amendment to its Answers to Plaintiff's First Set of Interrogatories amends its Answers to include the following:

12 (a):	12 (b):	12 (c):	12 (d):
Alamo Electric	electrical construction	Alma, AR	9/21/79-present
Alamo Expert Roofing	construction and roofing materials	Alma, AR	9/25/79-present
Alamo Land Development	Real Estate Investments & sales	Alma, AR	9/21/79-present
Alamo Packing	Packing & storage	Alma, AR	9/21/79-present
Alamo Plumbing	plumbing	Alma, AR	9/21/79-present
Alamo Quarries	sand and gravel	Alma, AR	9/21/79-present
Holiness Tabernacle School	school	Alma, AR	8/20/79-present

II

All other words, figures and allegations of defendant's original Answers to Plaintiff's First Set of Interrogatories shall remain as originally filed except as are amended by this instrument.

DATED this 21 day of February, 1980.

TONY AND SUSAN ALAMO FOUNDATION

By /s/ Tony Alamo
TONY ALAMO, President

STATE OF ARKANSAS)
) SS
COUNTY OF SEBASTIAN)

Subscribed and sworn to before me, a Notary Public, on this 21 day of February, 1980.

/s/ Nina Dell Williams
Notary Public

My Commission expires:
August 22, 1981

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

Civil Action File
No. 77-2183

RAY MARSHALL, Secretary of Labor,
United States Department of Labor,

Plaintiff,

v.

TONY AND SUSAN ALAMO FOUNDATION, et al.,

Defendants.

PRELIMINARY INJUNCTION

(Filed March 30, 1981)

Plaintiff's motion for a preliminary injunction having come on for consideration, and it appearing to the court that (a) defendants have failed to make, keep and preserve adequate records of the wages, hours and other working conditions and practices of the persons whom defendants contend are volunteers and whom plaintiff contends are employees of defendants, (b) plaintiff has a substan-

tial probability of success at trial on the merits, (c) the failure of defendants to make, keep and preserve adequate records of the wages, hours and other working conditions and practices of the persons whom defendants contend are volunteers and whom plaintiff contends are employees of defendants has resulted in and will continue to result in irreparable injury to plaintiff, *Mitchell v. Mormando Bros. Co.*, 134 F.Supp. 707, 709 (S.D. N.Y. 1955), and (d) in a case such as this, it is self-evident that the public interest will be promoted by the District Court taking the steps necessary to prevent violations of the record keeping provisions of the Fair Labor Standards Act (hereinafter referred to as the Act) when they are about to occur or to prevent their continuance after they have begun, *Walling v. Brooklyn Braid Co.*, 152 F.2d 938, 940-941 (2 C.A. 1945); it is therefore

ORDERED that defendants and their officers, agents, servants, employees and those persons in active concert or participation with them be, and hereby are, enjoined and restrained temporarily pending the entry of a final judgment herein from violating the recordkeeping provisions of sections 11(c) and 15(a)(5) of the Act (29 U.S.C. §§ 211(c) and 215(a)(5)) by failing to make, keep and preserve adequate and accurate records of the persons whom defendants contend are volunteers and whom plaintiff contends are employees of defendants; which records are required to be made, kept and preserved by section 11(c) of the Act (29 U.S.C. § 211 (c)) and are specified in the Code of Federal Regulations, Title 29, Part 516; and it is further

ORDERED that the United States Marshall shall serve separate copies of this preliminary injunction upon each of the four defendants.

DATED this 27 day of March, 1981.

/s/ William R. Overton
United States District Judge

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

Civil No. 77-2183

RAYMOND J. DONOVAN, Secretary of Labor,
United States Department of Labor,
Plaintiff,

v.

TONY AND SUSAN ALAMO FOUNDATION, et al.,
Defendants.

DEFENDANTS' LIST OF VOLUNTEERS OR ASSOCIATES AND DEFENDANTS' LIST OF EMPLOYEES

(Filed April 6, 1981)

The defendants list as attached "Exhibit A" the names of the volunteers or associates of the Foundation and attach as "Exhibit B" the list of the employees, showing their hours worked and payments made to the employees for wages. [Exhibit B not included herein]

Tony and Susan Alamo Foundation,
Tony Alamo, Susan Alamo and
Larry LaRonche
Defendants

Gean, Gean & Gean
Attorneys for Defendants
500 First Federal Bldg.
Fort Smith, Arkansas 72901

By Roy Gean, Jr.

CERTIFICATE

I certify that I mailed a true copy of the above and foregoing Defendants' List of Volunteers or Associates and Defendants' List of Employees to Mr. Robert A. Fitz, U. S. Department of Labor, Office of the Solicitor, 555 Griffin Square Building, Suite 501, Dallas, Texas, 75202, attorney of record for the plaintiff, on this 6th day of April, 1981.

By Roy Gean, Jr.

"EXHIBIT A"

NAME	NAME
Achey, Gerald R.	Clark, George Alford
Achey, Kathleen (Gardea)	Curry, Dorothy (Singley)
Anderson, Adrian	Curry, Bill
Anderson, Eschol	Danaher, Gary Joseph
Arauz, Ray	Decker, Joan (Assaly)
Archambault, Marc	Decker, Ronald Barry
Avila, Vose Filepe	Depuy, Herbert Thomas
Avila, Becky (Thompson)	Duffield William M.
Balsley, Robert	Durning, Scott Charles
Balsley, Susan (Moran)	Edwards, Josephine
Beck, Don Walter	Elmore, Ann (Levin)
Bennetti, Angelo	Elmore, Michael
Blackmon, Joseph	Elmore, Roderick
Borek, Michael Ralph	Farr, Terry Robert
Borek, Shelly (Lombardo)	Farmer, Bernadette Edith
Borkevec, Danny I.	Fisher, David Joseph
Brawner, June	Franckiewicz, Theadore Wayne
Brawner, Ken	Franskiewicz, Varina (Drake)
Braziller, Ed	French, Thomas Wortley
Calagna, Anthony	Funmaker, Mona

NAME	NAME
Calagna, Barbara (Wood)	Gallimore, Lloyd Roger
Carson, Danny Lee	Gamez, Bev (Peters)
Cochran, Dolores (Saniger)	Gamez, Francisco Javier
Cochran, Harvey Lee	Garner, Jackie Ray
Critelli, James Roger	Garris, Dalen Burnel
Cummins, Allan Reynard	Garris, Cindy (McKenzie)
Cunneen, Mark F.	Giroux, Raymond Bernard
Cunneen, Myra (Funmaker)	Gonzales, Mario Xavier
Gorbea, Tee Anthony	Hunt, Linda (Neswald)
Gorbea, Pamela (Zimmerman)	Johnson, Al Quenton
Gonzales, Patty	Jones, David Patrick
Gonzales, Tee Anthony	Jones, Shirley (Dewell)
Greiner, Claudia (Kinney)	Jordan, Vernon James
Greiner, Mark Anthony	Kaffen, Norman
Griffin, Ann (Johnson)	Keil, John
Griffin, James Neal	Kellogg, Claudia
Giroux, Peter Leo	Kelly, Nanette (Joyner)
Giroux, Susan (Little)	Kelly, Keith Albert
Hallet, Gary Todd	Kenworthy, John Robert
Harris, Ernie	King, Timothy Steven
Harris, Patricia (Decker)	Koelzer
Herrero, Frank Robert	Krantz, Bert Ralph
Herrero, Valerie (Escalona)	Kunkel, Diane
Herriot, Patrick Noel	Kurtz, Roger M.
Herriot, Vicky (Hail)	Levy, Ina (Beaber)
Hickman, Don	Levy, William Arnold
Hopkins, Jon R.	Lovelette, Stephen Benjamin
Horvath, Diane (Tamborski)	Lowe, Michael
Horvath, Steven Charles	Levine, Shimon Harold
Howard, Gregory V.	Lamberson, Jim Everett
Howard, Martin Lawrence	Larison, Gary A.
Howard, Mary Jane (Coffey)	Larison, Victoria (Voakes)
Hudnall, Leslie (Benavidez)	Lehman, Peter L.
Hudnall, Tommy	Lerma, Oscar Luis
Hunt, Jim	Mack, Edward Thomas

Name	Name
Mann, Ian	Randall, John David
Mann, Ann (Roudolph)	Reid, Alphonso
Marhuenda, Marcel Antoine	Reid, Cynthia (Fitzpatrick)
Mick, Ed	Romero, Anna M.
Mick, Sharon (Baldridge)	Romero, Ernesto Cesena
Miller, Robert Alan	Romero, Maurilia (Cervantes)
Miller, Susan (Mc Elroy)	Romero, Ernest Jr.
Morganflash, Gary	Rubringer, Brian
Morganflash, Mary (Williams)	Sadler, Andrew Alan
McClelland, Cheryl Ann	Scarcello, Piper (Craddock)
McClelland, Richard	Scarcello, Thomas
McInnis, Jerry Wayne	Schroeder, Randy
Nash, Gary	Scruggs, John Howard
Ondrisek, Debra Ann (Tanner)	Seps, Lawrence S.
Ondrisek, Richard Frank	Seps, Sheva (Zeil)
Orlando, Joseph Stephen	Shapiro, Daniel Bruce
Orlando, Lenore (Hedlund)	Shapiro, Judith (Doctor)
Overmeyer, Nancy Jo (Norman)	Silverman, Michael James
Overmeyer, Robert Allen	Sivak, Emil
Payne, Neill Hunter	Smith, Donald
Pini, Barbara (Ciaverelli)	Sorenson, Frederick George
Pini, Steven Michael	Stanton, Marty F.
Powell, Debra (Saniger)	Stile, Connie
Powell, Robert Lee	Stoeckel, Mike
Pryor, Carolyn A. (Travis)	Stoeckel, Sherry
Pryor, William Ronald	Streit, Robert John
Penman, Lisa C.	Suihkonen, Rodger
Suihkunen, Carol (Lukas)	Way, Simon James Lucian
Sutton, Charles Thomas	Wedel, Steven Robert
Sweat, Jean (Pucket)	White, Sandford Carl
Sweat, Roberl Earl	White, Terri (Thompson)
Swimmer, Joel	Whitman, Elaine (Cunningham)
Szymski, Dennis Anthony	Whitman, John
	Willis, Leon Harrison, Jr.

Name	Name
Tagmeyer, Jim A.	Witter, Dennis
Takesian, Dolores	Wolf, Donn W.
Vallejos, Ronnie M.	Wolfley, Katheline Sue
Vallejos, Suzanne	Wright, Jerry Lee
Vincent, Connie (Jones)	Walker, Lynda (Mason)
Vincent, Gilbert Joseph	Walker, Robert James
Way, Janet (Puff)	Youtsey, Bradley Charles
Aburto, Chuy	Newton, Fred L.
Bell, Theodore J.	Olson, Terry Elton
Brooks, Charles	Parks, Brenda
Brown, David Michael	Partosan, Russell Len
Bulter, Ralph	Pendleton, Douglas Joseph
Danaher, Cindy (Drake)	Pepiton, Kenneth L.
Dicola, Louis Anthony	Primous, Charlena (McDaniel)
Harrington, Curtis David	Primous, Syl L.
Haynes, Barry William	Richardson, James Edward
Howell, James Randy	Riddle, Andre
Hitchener, Robert Steven	Riddle, Andrew Bryan, III
H'Leppe, Garth Johnny	Risha, Ed George
Lakofka, Bruce	Schafer, Fred Jay
Landgarten, Marc Stuart	Schafer, Ginger (Smith)
LaRoche, Lawrence Michael	Scheff, David Adlai
LaRoche, Rebecca Louise	Sparks, Gay Nell
Miller, Carey Lee	Sparks, Paul W.
Miller, Carol (Daniele)	Sprinkle, Randal Allan
Newton, Roberta (Beardsley)	Sweat, Don Ray
Alford, Thomas, N.	Gilbert, Chuck Robert
Allen, Carol (Stubbs)	Griffin, George Levent
Allen, Edwin Ray	Gunnip, Patrick Conrad
Anderson, Alan C.	Hart, John Alfredy
Arcand, Bill Henry	Hersey, Phillip Winslow
Askey, David George	Hodson, Jeff L.
Beardsley, Bart	Hustus, Albert
Berglund, Roger Owen	Jackson, James Lee

NAME	NAME
Bevan, Paul Michael	Jacobsmeyer, James Grant
Bolden, William Harvy	Keller, John C.
Bonney, Righard Edwin	King, Lee
Brubach, Douglas Graig	Krivda, Ronald Joseph
Carpenas, Ontario Salazar	Kurecki, Steven A.
Coates, David	Limas, Joe V.
Cole, Roger Arthur	Lavender, Bill Lee
Coulter, Robert William	Mac Gregor, Gordan
Cupka, Jack J.	Miller, Richard
Davis, Donald Arthur	Minnabarriet, Daryl
Deboer, Arle Kurt	Mironenko, John
Dickerson, Gilbert L.	Monroe, Arthur Lee, Jr.
Dupre, James	Morales, Fermin
Durham, Stanley Craig	McCarthy, James F.
Ecelbarger, Richard Wade II	McCarthy, Roy
Edwards, Ben	O'Brian, Robert M.
Espinosa, Rosenaldo Cristobal	Parrish, William K., Jr.
Fazzalaro, Frank Francis	Patterson, Greg Alan
Fryer, Thomas Wortley	Payne, Marvin Marion
Funmaker, Sherman James	Pedro, Nick Robert
Gibbons, Dale Lee	Plaistowe, William Charles
Pochatko, Peter George	Thorne, Don Nolton
Pochatko, Rose Mary (Jonas)	Tiner, Richey Lee
Reza, Pedro G.	Travis, Anthony
Reyes, Victor Hugo	Trefry, Frank Harold, Jr.
Roby, Keith Douglas	Vaataja, Tuomo Aulis
Romero, Richard Anthony	Venegas, Mario
Rutledge, Larry Edward	Waller, Gary Eugene
Saniger, Robert J.	Waller, Ila (Funmaker)
Schmitz, Allen Michael	Watson, Anthony
Smith, Thomas Vernon	Watson, Paul M.
Stessl, James Carl	Wheeler, Bradley W.
Stone, James Garnest	Willis, Lydia
Testa, Robert James	Willis, Ruth
	Wood, John Anthony

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

77-2183

RAYMOND J. DONOVAN, Secretary of Labor,
United States Department of Labor,
Plaintiff

vs.

TONY and SUSAN ALAMO FOUNDATION, et al.,
Defendants

AMENDMENT OF ANSWER

(Filed August 6, 1981)

Come now the defendants, and each of them, with leave of Court, and pursuant to Rule 15 of the Federal Rules of Civil Procedure, amend their Answer herein filed on January 21, 1980, by adding the following affirmative defenses to their Answer to the Complaint filed in the above styled cause:

FOR A SEVENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to the Complaint the defendants allege that the defendants' associates ("employees" as alleged by the plaintiff) and their activities are exempt under sections 206 and/or 207 of the Fair Labor Standards Act by reason of 29 U.S.C.A. § 213(a)(1) executive, administrative, professional capacity, or capacity of outside salesman, (a)(2) retail or service establishment, (a)(3) religious or nonprofit educational conference center, (a)(4) retail establishment, (a)(6) agriculture, (a)(7) learners, apprentices, students, and handicapped workers, (a)(8) publications, (a)(15) companionship services,

(b)(10)(A) salesman, partsman or mechanic, etc., (b)(5) outside buyer of poultry, etc., (b)(11) driver, driver's helper, (b)(12) agriculture maintenance of ditches, canals, reservoirs or waterways, (b)(13) agriculture, (b)(16) transportation and preparation for transportation of fruits and vegetables, etc., (b)(21) domestic service, (b)(28) planting or tending trees, etc., and 29 U.S.C.A. § 214, learners, apprentices, students and handicapped workers. That defendants reserve the right to further plead in regard to this exemption defense and will so plead with particularity upon receipt of the answers to the interrogatory propounded to the plaintiff in connection with this Amendment.

FOR AN EIGHTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to the Complaint the defendants allege that should it be found that the Fair Labor Standards Act applies, defendants are entitled to a credit for the reasonable cost of furnishing the associates allegedly represented by the plaintiff with board, lodging, clothing, other facilities, medical and dental benefits and other benefits.

All other words, figures, allegations and statements set forth in the Defendants' Answer filed herein shall remain as originally filed.

WHEREFORE, defendants pray judgment that the Complaint be dismissed, that defendants have their costs incurred herein, and for such other and further relief which the Court finds proper and just.

Tony and Susan Alamo Foundation,
Tony Alamo, Susan Alamo and
Larry LaRouche—Defendants

Gean, Gean & Gean
Attorneys for Defendants
500 First Federal Building
Fort Smith, Arkansas 72901

By /s/ Roy Gean, Jr.

CERTIFICATE OF SERVICE

I, Roy Gean, Jr., the undersigned, certify that I have served a copy of the foregoing Amendment of Answer upon the plaintiffs in this action by mailing a copy to Mr. Robert A. Fitz, U. S. Department of Labor, Office of the Solicitor, 555 Griffin Square Building, Dallas, Texas 75201, on this 6 day of April, 1981.

/s/ Roy Gean, Jr.

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

NO. CIV 77-2183

RAYMOND J. DONOVAN, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR

Plaintiff

VS.

TONY AND SUSAN ALAMO FOUNDATION, TONY ALAMO, SUSAN ALAMO, AND LARRY LAROUCHE

Defendants

MEMORANDUM AND ORDER

BEFORE:
THE HONORABLE WILLIAM R. OVERTON

Dated December 10, 1982, and
entered December 13, 1982

[See Appendix A, page 1-40,
of Petition for Writ of Certiorari
to the United State Court of Appeals
for the Eighth Circuit, herein docketed
in the United States Supreme Court on
May 25, 1984, as Case No. 83-1935.]

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

NO. CIV 77-2183

RAYMOND J. DONOVAN, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR

Plaintiff

VS.

TONY AND SUSAN ALAMO FOUNDATION, TONY ALAMO, SUSAN ALAMO, AND LARRY LAROUCHE

Defendants

JUDGMENT

BEFORE:
THE HONORABLE WILLIAM R. OVERTON

Dated February 7, 1983, and
entered February 9, 1983

[See Appendix A, page 41
of Petition for Writ of Certiorari
to the United States Court of Appeals
for the Eighth Circuit, herein docketed
in the United States Supreme Court on
May 25, 1984, as Case No. 83-1935.]

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

NO. CIV 77-2183

RAYMOND J. DONOVAN, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR

Plaintiff

VS.

TONY AND SUSAN ALAMO FOUNDATION, TONY ALAMO, SUSAN ALAMO, AND LARRY LAROUCHE

Defendants

ORDER

BEFORE:
THE HONORABLE WILLIAM R. OVERTON

Dated February 7, 1983, and
entered February 9, 1983

[See Appendix A, pages 42-45
of Petition for Writ of Certiorari
to the United States Court of Appeals
for the Eighth Circuit, herein docketed
in the United States Supreme Court on
May 25, 1984, as Case No. 83-1935.]

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

NO. 82-2549WA
NO. 83-1463WA

RAYMOND J. DONOVAN, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR

Appellee

VS.

TONY AND SUSAN ALAMO FOUNDATION, TONY ALAMO, SUSAN ALAMO, AND LARRY LAROUCHE

Appellants

JUDGMENT

Dated December 5, 1983, and
entered March 14, 1984

[See Appendix A, page 47
of Petition for Writ of Certiorari
to the United States Court of Appeals
for the Eighth Circuit, herein docketed
in the United States Supreme Court on
May 25, 1984, as Case No. 83-1935.]

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

NO. 82-2549WA
NO. 83-1463WA

RAYMOND J. DONOVAN, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR

Appellee

VS.

TONY AND SUSAN ALAMO FOUNDATION, TONY ALAMO, SUSAN ALAMO, AND LARRY LAROUCHE

Appellants

DECISION

Dated December 5, 1983

[See Appendix B, pages 48-63 of Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit, herein docketed in the United States Supreme Court on May 25, 1984, as Case No. 83-1935.]

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

NO. 82-2549WA
NO. 83-1463WA

RAYMOND J. DONOVAN, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR

Appellee

VS.

TONY AND SUSAN ALAMO FOUNDATION, TONY ALAMO, SUSAN ALAMO, AND LARRY LAROUCHE

Appellants

ORDER [OF AMENDMENT]

Entered February 27, 1984

[See Appendix B, pages 64-67 of Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit, herein docketed in the United States Supreme Court on May 25, 1984, as Case No. 83-1935.]

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

NO. 82-2549WA
NO. 83-1463WA

RAYMOND J. DONOVAN, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR

Appellee

VS.

TONY AND SUSAN ALAMO FOUNDATION, TONY ALAMO, SUSAN ALAMO, AND LARRY LAROUCHE

Appellants

ORDER [DENYING PETITION FOR REHEARING]

Dated March 1, 1984

[See Appendix B, page 68 of Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit, herein docketed in the United States Supreme Court on May 25, 1984, as Case No. 83-1935.]

DECISIONS IN QUESTION

A. MEMORANDUM AND ORDER [Dated 10 December, 1982, and entered 13 December 1982]

United States District Court for the Western District of Arkansas, Fort Smith Division, No. CIV-77-2183, Raymond J. Donovan, Secretary of Labor, United States Department of Labor v. Tony and Susan Alamo Foundation, Tony Alamo, Susan Alamo, and Larry LaRouche [See Appendix A, pages 1-40 of Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit, herein docketed in the United States Supreme Court on 25 May, 1984, as Case No. 83-1935]

B. ORDER [Dated 7 February, 1983, and entered 9 February, 1983]

United States District Court for the Western District of Arkansas, Fort Smith Division, No. CIV-77-2183, Raymond J. Donovan, Secretary of Labor, United States Department of Labor v. Tony and Susan Alamo Foundation, Tony Alamo, Susan Alamo, and Larry LaRouche [See Appendix A, pages 42-45 of Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit, herein docketed in the United States Supreme Court on 25 May, 1984, as Case No. 83-1935]

C. DECISION [Dated 5 December, 1983]

United States Court of Appeals for the Eighth Circuit, Case Nos. 82-2549 WA and 83-1463 WA, Raymond J. Donovan, Secretary of Labor, United States Department of Labor vs. Tony and Susan Alamo Foundation, Tony Alamo, Susan Alamo, and Larry LaRouche [See Appendix B, pages 48-63 of Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit, herein docketed in the United States Supreme Court on 25 May, 1984, as Case No. 83-1935]

D. ORDER [OF AMENDMENT] [Entered 27 February, 1984]

United States Court of Appeals for the Eighth Circuit, Case Nos. 82-2549 WA and 83-1463 WA, Raymond

J. Donovan, Secretary of Labor, United States Department of Labor vs. Tony and Susan Alamo Foundation, Tony Alamo, Susan Alamo, and Larry LaRouche [See Appendix B, pages 64-67 of Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit, herein docketed in the United States Supreme Court on 25 May, 1984, as Case No. 83-1935]

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

BEFORE:
HONORABLE WILLIAM R. OVERTON
UNITED STATES DISTRICT JUDGE

NO. 77-2183

RAYMOND J. DONOVAN
SECRETARY OF LABOR
UNITED STATES DEPARTMENT OF LABOR,

Plaintiff

VS.

TONY AND SUSAN ALAMO FOUNDATION,
TONY ALAMO, SUSAN ALAMO, AND
LARRY LAROUCHE,

Defendants

Reporter's Transcript
of
Pre-Trial Conference

March 29, 1982

REPORTED BY
SANDRA SMITH, CVR

APPEARANCES

For the Plaintiff

Robert Fitz, Esquire
Office of the Solicitor
555 Griffin Square Building
Dallas, Texas 75202

For the Defendants

Roy Gean, Jr., Esquire
Attorney at Law
500 First America Building
Fort Smith, Arkansas 72901

PRETRIAL CONFERENCE

• • •

(p. 6) Mr. Gean: Your Honor, in regard to those associates, the full list of those people who have been associated with the Foundation as to their names and location have been given the Secretary of Labor.

It is their position—As I understand their position, the Secretary of Labor contends that these people were employees and the employer-employee relationship existed as is defined in the Act and as has been clarified by the courts.

It is our contention that not any one of those persons are within the confines of the Act so far as their employer-employee (p. 7) Mr. Gean: (continuing) relationship is concerned.

To prove that, of course, we would have to have those people here to testify. In regard to that, I would like to make a suggestion to the Court, and I believe I have gotten an indication from, I believe it was one of your court

reporters that called me, Judge, that you didn't want all of the statements from these people and to send a sampling of them, which we did.

However, the statements that they have made do not necessarily go with this particular fact. These are voluntary statements made by the persons in regard to their activities with the Foundation.

Perhaps if we could limit that with the understanding —That is, limit the number we are going to call—the understanding that their testimony—And it is my understanding from the ones I have discussed these matters with, and, Judge, I have not discussed this with all the people that are involved but I have with numbers of them, that they all take the same position that they do not expect any compensation, that they have not expected any compensation from the time of their first association with the church or with the Foundation.

I think this is very important in view of the decisions of our courts in regard to whether these people are covered by the Fair Labor Standards Act.

(p. 8) Mr. Gean: If it is necessary, Your Honor, we would be in a position to call each one of them. I personally don't think we need to if we could agree that the sampling that we have would be sufficient for the entire group, and, Your Honor, with this further stipulation; that the Secretary of Labor be given permission to call any one of these that he wants to if he feels like we are being unfair in our selection or sampling.

• • •

(p. 9) The Court: Is the primary purpose of these three hundred people to show that they went to work, that their motivations are religious, and that they are not expecting any compensation?

Mr. Gean: Yes, sir, I think that's the gist of it.

The Court: Why don't you pick out two or three of them and we will assume that if the ones whose statements were furnished testifies on that issue, they would testify the same way. How will that be, Mr. Fitz?

Mr. Fitz: I don't suppose there would be any problem with that, Your Honor.

The Court: Mr. Fitz, if you find some among that group you think would testify to the contrary, of course, you are free to call them.

I gather you will have what, four or five witnesses, Mr. Gean?

Mr. Gean: To testify in regard to those issues about what we've just finished?

The Court: Well, Mr. Alamo, Mrs. Alamo, and then two or three witnesses on this First Amendment and also voluntary nature.

• • •

(p. 11) The Court: I think Mr. Fitz has indicated he was agreeable to entering into an agreement that if additional people were called it would be cumulative with what those two or three would say about the issue of their voluntariness and lack of expectation of compensation, and that sort of thing.

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

BEFORE:
HONORABLE WILLIAM R. OVERTON
UNITED STATES DISTRICT JUDGE

NO. 77-2173

RAYMOND J. DONOVAN
SECRETARY OF LABOR
UNITED STATES DEPARTMENT OF LABOR,

Plaintiff

VS.

TONY AND SUSAN ALAMO FOUNDATION,
TONY ALAMO, SUSAN ALAMO, AND
LARRY LAROUCHE,

Defendants

Reporter's Transcript
of
Court Trial

April 28-30, 1982

REPORTED BY
SANDRA SMITH, CVR

APPEARANCES

For the Plaintiff

Robert Fitz, Esquire
Ronnie A. Howell
Office of the Solicitor
555 Griffin Square Building
Dallas, Texas 75202

For the Defendants

Roy Gean, Jr., Esquire
Roy Gean III
Attorneys at Law
500 First America Building
Fort Smith, Arkansas 72901

VOLUME II

JOHN D. SHASTEEN, produced as a witness on behalf of the Plaintiff, having been first duly and regularly sworn, testified as follows, to wit:

Direct-Examination

• • •

By Mr. Fitz

(p. 40) A. Yes. My company, Shasteen Distributing Company, who I work with or represent, was employed by the Alamos.

Q. When was this?

A. It started in about, I believe it was May, '78, around May, give or take a month or so.

Q. How long were you employed by the Foundation?

A. Almost two years.

Q. Okay, sir. Who hired you?

A. Mr. Tony Alamo.

Q. Would you describe the circumstances which surrounded your hiring?

A. Yes. I was in Nashville; I went with another gentleman, and I met Tony. And I saw his candy line. And I happened to have a distributing company at the

time. And I told him, I said the candy line looked good to me and I thought I could sell it.

So the conversation went from there and we worked out an agreement, and I started representing him from there.

Q. Do you remember the terms of that agreement?

A. Yes. It was a straight commission; he was to pay me one percent of the total sales over a period of time; and in the meantime he paid me a draw, expense draw, and all my expenses on the road, Three Hundred Dollars a week and then later raised it to Three, Fifty.

• • •

(p. 42) Q. Okay, sir. Actually, what were your job duties?

A. I was to hire brokers to represent our candy company, and I traveled all over the United States hiring candy brokers and brokers to sell our candy.

O. Okay, sir. Do you remember specifically which states you traveled in?

A. I traveled in a lot of states; I traveled in a lot of states. I hired brokers; I went to a candy show in Boston and represented the Foundation there. Several different states was represented there. Then I went to Phoenix, Arizona, to a candy show there. And then I traveled to New York, Massachusetts, Rhode Island, Connecticut, Alabama, Georgia, North Carolina, Florida, all over; I've traveled all over the United States.

Q. Okay, sir. Well, first of all, how many hours a week did you work?

A. There was no set time or hours, just whenever I could get an appointment with the people that I was hiring. Sometimes I'd hire one broker a week and sometimes I'd hire more, you know, depending on how I could make my appointments. It was on no set time, just whenever I could reach brokers.

Q. Okay, sir. Were you ever informed in your discussions concerning your employment where this candy was coming from?

A. I knew where it was coming from. It was coming from Alma.

• • •

Cross-Examination

By Mr. Gean

(p. 43) Q. You were paid, I believe, on a commission basis?

A. That was our arrangement.

Q. Was there any regulation of your time that you had to spend in connection with the selling of candy or whatever you did in regard to your business?

A. None whatsoever.

(p. 44) Q. Did you have complete and absolute control of your time, the places you would go?

A. Yes, sir.

Q. When you would go?

A. Yes, sir.

Q. And what direction you would head?

A. Yes, sir.

Q. Did you have a document or any sort of writing, a letter that you might have received in regard to your employment?

A. No, sir.

Q. This was just an agreement between you and Mr. Tony Alamo?

A. Mr. Alamo and I had a verbal agreement, and we, at one time, started to draft a letter to this effect. We agreed that his word was as good as mine and mine was as good as his, and that was good enough for us.

Q. Was there any withholding of federal or state taxes from any monies that you received?

A. No, sir.

Q. You were paid strictly on a commission basis?

A. Yes.

Q. I believe at first you had a draw, you said, of Three Hundred Dollars?

A. Yes.

Q. Was that a—

A. It was all draw, Three Hundred Dollars a week.

(p. 45) Q. Three Hundred Dollars a week? You drew Three Hundred Dollars a week?

A. A week.

Q. And you did not have any requirement as to the time you had to spend?

A. No, sir.

Q. Was this against your one percent commission that you received?

A. Yes, sir.

Q. And later, I believe you said, the draw was increased to Three Hundred and Fifty Dollars?

A. Yes, sir.

Q. And that was Three Hundred and Fifty per week?

A. Yes, sir.

Q. Is it your contention that you have not been paid a sum that would equal the minimum wage?

A. I was paid more, by far, than my percentages ever reached.

Q. Even your percentages?

A. Yes. Yes, I was paid far more than minimum wage.

Q. Even more than your percentage that is your one percent commission?

A. Oh, yes, sir. We never reached that point; I never reached that point in sales.

• • •

(p. 46) The Court: Mr. Fitz, let me ask you a question about this testimony. Maybe I'm overlooking something that's obvious from the testimony. But what's the significance of his testimony?

Mr. Fitz: Your Honor, the primary purpose behind (p. 47) Mr. Shasteen's testimony was to show that the

Foundation has been—it's the first step in our proof of showing the Foundation is involved in interstate commerce.

The Court: Well, is that an issue?

Mr. Gean: No, sir.

Mr. Fitz: Yes, sir, I think it is. We're going to have to establish interstate commerce in establishing the jurisdiction of this lawsuit.

Mr. Gean: Well, Your Honor, we have, in our depositions, we've admitted that the gross sales during the particular time that we're involved exceeded the—I mean, he went into matters concerning payment and not just why—

The Court: Well, I'm totally confused about all the detail about his payment. I thought maybe you were suggesting he was not paid the minimum wage or something.

Mr. Howell: Your Honor, there may exist some question as to payment to Mr. Shasteen with regard to overtime. But I don't think there's any dispute about minimum wage.

The Court: Overtime?

Mr. Howell: Yes, sir. There may have been some at one time, Your Honor.

The Court: I mean, is there some basis and fact from this testimony by which I'm supposed to reach that inference or conclusion?

Mr. Howell: Mr. Shasteen's testimony, Your Honor, the (p. 48) only thing I can say, at a prior trial there was an argument in efforts for overtime compensation due Mr. Shasteen. I'm not sure that his testimony this afternoon

is going to prove up that point. But it does prove up, as I say, the interstate commerce question that I felt and was of the opinion was still an issue.

Mr. Gean: Your Honor, we don't even think it establishes that. This man has his own business.

The Court: Well, he was a contractor to sell their products interstate commerce.

Mr. Gean: Well, they contracted with him. He could sell it anywhere he wanted to.

The Court: Well, that's really not an issue.

Was there any reason I need to look at Mr. Shasteen's testimony at this point?

Mr. Howell: Your Honor, with regards—if the products in interstate commerce question is still in question, I think that your notes might be helpful in that regard. But outside of that,—

The Court: Well, I tell you, Mr. Gean is stipulating that they operate in interstate commerce.

Mr. Howell: Then it has no significance.

The Court: Okay, sir.

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BILL LEVY, produced as a witness by and on behalf of the Defendants, having been first sworn, was examined, and testified as follows:

Direct Examination

By Mr. Gean

(p. 71) Q. How did you become associated with the Foundation?

A. I became associated with the Foundation almost twelve years ago when I came out to California from New York City. At the time, I was a heroin addict and I had been in an awful lot of trouble back in New York. I came out to California and somebody from the Tony and Susan Alamo Christian Foundation handed me a gospel tract.

I had been out in California a couple of days and I had gotten involved with people out there that were murdering people for money. And I decided to take up the occupation. I was on my way to commit a contract murder and somebody handed me a gospel tract.

And I went by the church services and Tony Alamo was (p. 72) preaching the gospel. And he preached about a heaven and he preached about a hell.

I was raised in a Jewish faith, and I never heard about Jesus Christ; I never heard about—I never believed in God, really, but I believed what he was saying. He said that if I said the Sinner's Prayer and asked Jesus Christ to come into my heart, that God would wash away every sin that I ever committed and he'd change me in the twinkling of an eye, and I'd become a new creature in Christ.

And I believed it, and I came down and gave my heart to the Lord Jesus Christ. That will be twelve years ago, May 6, 1970.

And the Lord did change my life. From that second on, I never took another narcotic or drug. I was instantly delivered.

I had been in Government funded projects to try to get rid of my drug addiction, the Phoenix House in New York City, and nothing worked for me until I met Jesus Christ.

And ever since then, I've devoted my lige to Christ, to the ministry of the Lord.

Q. Where have you done that?

A. At the Tony Alamo Christian Foundation.

Q. What do you do at the Tony and Susan Alamo Foundation?

• • •

(p. 73) A. I volunteer my services in whatever capacity I can be of use; I witness and testify; I go to church services; I seek baptisms with souls; I read with young christians; I go out on the street and bring the gospel of love to people. I do everything that I was taught by the founders of the church, Tony and Susan Alamo, in the ways of God; I attend prayer meetings. We have two prayer meetings every evening. I go out on witnessing chains and bring the message to the lost and dying in convalescent hospitals and jails, on the street, witnessing and testifying, whatever. In whatever capacity I am, the main thing that I do is witness for the Lord Jesus Christ.

• • •

(p. 76) Q. In regard to the working hours of those people who are associated with the Foundation, Ms. Petri said that there would usually be services or prayer meetings in the morning, 10:00 o'clock or so; then they would sew all afternoon and evening and late into the night, and sometimes into the early morning. And this would be

sewing clothes to send to Arkansas to our National Clothing Store.

A. That's incorrect. Our prayer meetings are always at 8:00 o'clock in the morning. And as far as people sewing all night and all day, they had like a little sewing deal where the girls would sew some quilts and things like that. It was just like a little sewing circle that the girls did.

Q. For whom were they sewing the quilts?

A. For themselves or to give to the poor, or what have you.

Q. Did you ever sew any quilts for sale?

A. I have never sewn any quilts at all.

Q. I'm sorry. Have those people with the Foundation ever sewn any quilts for sale?

A. Not that I know of.

Q. They were sewn primarily for those people associated with the Foundation?

A. Or for the poor.

• • •

(p. 77) Q. Do you hold some particular position with the Foundation as to what you do in regard to some agriculture work?

A. I volunteer my services on the hog farm, if that's what you mean.

Q. Now, what is done with the hogs that are raised at the hog farm?

A. Some of it goes to the congregation, you know, to slaughter for the congregation; some of it is sold.

Q. What is your connection with the hog farm?

A. I volunteer my services at the hog farm; I slop the hogs sometimes; sometimes I give them shots.

• • •

(p. 78) Q. Prior to that, what did you do? Did you work away from the Foundation?

A. Yes, I did.

Q. Describe that type of activity and those people who are associated or volunteer, as you say, with the Foundation working outside jobs at the Foundation?

A. Yes. A few of us would get together and possibly decide to go out and get a job. It may be planting trees or it may be — I'd worked at [illegible]anders Factory in Fort Smith, Arkansas.

Q. Did you do that for a long period of time?

A. Several months.

Q. All the time you were associated with the Foundation from January, 1976 until you started working with the hogs?

A. Excuse me, sir?

Q. The time from January, 1976, until you started working at the hog farm, were you working at outside work?

A. Not all the time.

Q. The rest of the time, what were you doing?

(p. 79) A. Helping out around the Foundation, you know, helping with concrete; maybe it was concrete work, maybe helping with whatever had to be done. Sometimes I

would do nothing but witness and testify. At all times, I'd be witnessing and testifying for the Lord Jesus Christ; in whatever capacity I was, I would constantly be witnessing and testifying for the Lord Jesus Christ at all times.

Q. You mentioned that you were at Flanders Manufacturing. What was your purpose in being there?

A. Just work.

Q. Was it a source of witnessing for you?

A. Excuse me?

Q. Was it a source to witness?

A. Oh, yes, certainly.

Q. Did you witness there?

A. Yes, I witnessed there an awful lot. I won several people to Christ at Flanders.

Q. The monies that you received from these jobs outside, to whom were payments made for those services?

A. To me.

Q. What could you do with that money?

A. I personally would tithe it to the church.

Q. The entire amount?

A. Yes, sir.

• • •

(p. 80) Q. Well, was it not? Were you forced to bring any payments in or coerced to do so?

A. No, I wasn't coerced to do so or forced to do so. I did it according to the dictates of my own heart, because that's the way I believe; that's my beliefs.

Q. Was this a matter of belief that you did this?

A. Oh, certainly.

Q. Your working at these various jobs and coming in and also working around the Foundation, why did you do that?

A. Because this is the beliefs that I have; this is the way that I have chosen to serve God. And I believe — the Bible says to love the Lord Your God with all your heart, mind, body, soul, and strength. And it's a Commandment, and that's what I do. I believe that what God has done for me, I couldn't put a dollar and cent sign on. God has given me eternal life; he's taken me out of a life of drug addiction; he's reunited me with my family, which I had not been prior to becoming a (p. 81) Christian. If I had not been a Christian, it's my personal belief that I would be dead right now. I have tried to commit suicide numerous times before I became a Christian. And I believe that it's what I do for God and that it's my reasonable service that's an act of love and charity.

Q. Is this the expression of the other members of the Foundation?

A. Yes, it is.

Q. You said you had attempted to commit suicide. Had you been hospitalized for that?

A. Yes, I was.

Q. Had you been institutionalized prior to the time you accepted Christ?

A. Before the time I accepted Christ, I was; after I accepted Christ, I have never been, nor have I ever been

arrested, nor have I ever been given a parking ticket.

Q. Prior to that time, had you been arrested?

A. Many times.

Q. You have been charged with serious crimes?

A. I've been picked up for grand larceny, arrested for burglary, picked up for murder, and several other offenses.

Q. Did you have to do any time at any of the jails or penitentiaries in our country?

A. I did detention time. My father was an editor with the New York Times news staff, and he supplied me with good counsel. (p. 82) I was considered a youthful offender and I was never convicted of any such crimes.

Q. While you were growing up, as to your academic abilities, did you have any honors bestowed upon you in that area of your life?

A. Yes, I did. In my early ages, when I was in the sixth grade I got a Government grant to go to New York University for science.

Q. Did you say the sixth grade?

A. Yes, sir. I was voted the class scientist up until I got involved in drugs. Then my life went downhill.

Q. You said you were Jewish. I presume your parents are still Jewish?

A. Yes.

Q. In faith and in practice?

A. Mr. Gean, the only thing I can explain to you is, before I became a Christian I was an animal. I had threatened my father's life on numerous occasions; I would not let anybody touch me, including my mother. I was capable of exploding at any time and becoming very violent. And as far as my parents were concerned, I was dead.

When I became a Christian, I got in touch with my parents. My parents—my father being a news reporter—not a reporter, an editor for the Times, he was sort of leery; he wanted to see what I was doing.

(p. 83) He came out and when he saw the change in my life, both of them accepted Christ as their personal Savior.

Q. Were you involved in that experience of theirs?

A. Yes, I certainly was.

Q. How much of your time do you spend in witnessing?

A. Well, that's basically what I do. I mean, even when I am at the so-called hog farm, if a truck driver comes in delivering grain, we will start speaking to him. I will just drop whatever I am doing and start talking to him about the glory of God and what Jesus did for me.

Q. Are you encouraged to do this as a person associated with the Foundation?

A. Absolutely. That's what this work is all about. Tony and Susan Alamo have always taught us the concepts of the Lord Jesus Christ, that you must be born again, and that it's our duty as a Christian to go out and

tell people and compel them into the house of the Lord. And they brought us in the fear and admonition of the Lord, and they showed us in the word of God what we were required to do. We read it and then followed according to the dictates of our own heart.

Q. Did you do this as a matter of religious belief?

A. Absolutely.

Q. Is this a situation as to those who are associated with the Foundation?

A. Absolutely.

(p. 84) Q. Mr. Levy, you perform various tasks in addition to the hog farm that you've testified to. You also go out and witness. What percentage of your time are you actually away from the Foundation solely for the purpose of witnessing and not being involved in any other type of menial or physical activity other than the purpose of witnessing to others as you've described?

A. Quite often. In fact, I just came back from a trip. I went to Dallas, Texas, and witnessed in convalescent homes and on the streets.

Q. Do you have people from the Alamo Foundation that are in Dallas, Texas?

A. Yes, we do.

Q. How are those people supported down there? Do they work in jobs? Do they have any income to support themselves?

A. No, they don't; absolutely not.

Q. How are they supported?

A. The Church pays for it.

Q. Those of you, these associates and volunteers?

A. Yes, sir.

Q. How many do you have in Dallas now?

A. I'm not quite sure how many we have now. I know when I was out there, we had ten.

Q. How long were you there?

A. I was there for, I believe, four days. Then I went to (p. 85) Los Angeles.

Q. What was the purpose for going to Los Angeles?

A. We have a church out in Los Angeles. I went out witnessing and testifying there.

Q. Did you have any other type of activities, such as—I lack another way of describing it—working or physical or mental activity or clerking, or something of that nature?

A. Oh, no, absolutely not. When I went out, I went out strictly for the purpose of bringing the gospel to the lost and dying and praying with people and reading with the sick and the elderly.

Q. Reading what?

A. Reading the Bible. Going into homes where there were autistic children, retarded children, and bringing the gospel of peace and glory to them. We'd go and sing gospel songs to the elderly people or to the young retarded children, or people in jails, detention facilities. This was the sole thing that I did, and I would do it every day. I was out in Los Angeles for oh, I imagine three or four

weeks to do it. And then I went from there to Tulsa to do it; and then from Tulsa, I went to Chicago to do it.

Q. How long were you in Tulsa?

A. I was in Tulsa just for a day. It was a stay-over and I went out. Actually, wherever I am going, I'm handing out gospel literature and telling people about the Lord Jesus Christ.

• • •

(p. 87) Q. Do I use the right term when I say "working at the Foundation"?

A. No, you don't.

Q. What would be the right term, Bill?

A. Volunteering our services. We are volunteer witnesses—most people at the Church, or all people at the Church, their main job is not to work. The people who work in the restaurant, for instance, if somebody outside is hitch hiking down the road, well, the person that was a busboy at that minute, he'd see him outside the window, he'd leave the restaurant, go out and witness to him. And if it was for one, two, four, five, six, seven hours, he would stay out there. Now, you couldn't very well work a job for most people in Little Rock and do that, just take off and go witness and testify, and then if you win the soul to the Lord, sit down and read with them for another hour or two, and then take him into a prayer room and pray with (p. 88) them.

Our primary job in the Tony and Susan Alamo Christian Foundation, we are a soul winning gospel outreach group.

• • •

Q. In view of what you said and your expression to the Court today, is it possible to keep a record as to where you are and (p. 89) what you are doing during the course of a day or during the course of a week?

A. No. It would absolutely hinder me from following my religious convictions, my beliefs in God. In other words, I might be slopping the pigs and a truck driver come in there, I've got to check off the time I stopped slopping the pigs and go over to the truck driver and write —record how long I talk to the truck driver to witness to him about the Lord Jesus Christ, and then stop and check that off, and if I prayed with them, how long I prayed with them for. And then if I read the Bible with them, stop and check that off, how long I read Bible. And before you know it, I would be just doing nothing but filling sheets all day long.

Q. Could you keep that in your memory and do that maybe daily or weekly?

A. No, I couldn't.

• • •

(p. 90) Q. But when you were there at the Foundation and performing various tasks, you put down primarily hog farm during this time. Have you had other activity other than just at the hog farm?

A. Certainly.

Q. Give the Court an example.

A. If they needed help at the restaurant, I would bus for an hour or two; if there was a big, you know, whatever, if somebody was witnessing and testifying to somebody and I walked in there, I would help out in the restaurant;

if they needed somebody to wash dishes, I would help out and wash dishes; if they needed somebody to clean up, I would help clean up; or if I decided to just go out and witness and testify, I would go out and witness and testify.

Q. Do you have to, as a matter of rule or regulation, report to anybody to do these things?

A. No, sir.

Q. Are you assigned these specific responsibilities?

A. No, sir.

Q. Is anybody assigned any specific responsibilities?

A. No, sir.

Q. Has this been true since you've been with the Foundation?

A. Yes, sir.

Q. It seems difficult to me how you can operate an organization on that basis. But have you been able to function?

(p. 91) A. Yes, sir.

Q. What is the motivating force, the spirit that keeps all this going?

A. The Spirit of God; it's the Lord Jesus Christ. The people of the Church, their whole aim is to further the gospel of Christ, and that's our whole aim. And if somebody would come up to me, say, in the evening and say, "Bill, I'm going out on a witnessing chain. I was going to help out over here for an hour or two. Would you do that for me?" I would say, if I wasn't going out witnessing and testifying or wasn't scheduled to pray, or whatever, I would say, "Well, certainly, I will do that."

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(p. 97) We have a school that's provided free of charge, Christian school, where the kids can be brought up. They don't have to be around vulgarity; they don't have to be around some of the things that are in our public schools. And they get a finer education, because they are taught in smaller classes with more time devoted to each child.

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(p. 97) Q. What does it cost you to have your children go to school?

A. Absolutely nothing.

(p. 98) A. It's all provided by the Church.

Q. What about the food for you and your wife and children, other than when they are at school?

A. All of my food, my children's food, my wife's food, all of our clothing, all of our lodging, all of our every needs, even down to a toothbrush, tooth paste, socks, toilet paper, light bulbs, anything you could possibly require to live is given to us freely at the Church.

Q. What about dental and medical expenses?

A. They are certainly paid for by the Church.

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(p. 99) Whatever needs we have is all completely covered by the Church. It's completely met, fully met.

You can see by the picture that I haven't been wanting from food. When I first came to the Church, I was about a hundred pounds lighter. I was a heroin addict off the street; I hadn't eaten for about fourteen days.

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Q. You have taken the position that you are a volunteer?

A. Yes, sir.

Q. What does that mean?

A. That means that I have no expectation of wages whatsoever, never had. When I first came to the Church, I was not expecting (p. 100) a wage. I didn't come to the Church to make my fame and fortune; I came to the Church to learn about God. Whatever benefits I get I consider the blessings of God.

But had there not been such great benefits — which is obviously more than what I could get working. As a gas station attendant, I couldn't afford the clothes that I wear or anything; I couldn't afford to keep my family the way I do. It's obviously well and above what you could get if you had a minimum wage scale. But even if I didn't get such great benefits, I would still do what I am doing because it's my belief in the Almighty God.

Q. Bill, in regard to the volunteer, what does that mean to you in regard to the receipt of wages or the expectation of money to be paid to you or compensation of any sort?

A. I've never expected any compensation, any wages, nor do I ever expect to receive any compensation or wages for what I do, for what I do for the ministry of God. I believe it would be offensive to me to even be considered to be forced to take a wage. It would be an absolute offense to me.

Q. To your belief?

A. To my belief, certainly, it would be offensive to me.

Q. Do you know that the Secretary of Labor is asking that this Court issue an injunction requiring that Tony and Susan Alamo Foundation pay you certain amounts of money?

A. Yes, I do, and I hope it's not — I do not want the money, (p. 101) nor have I ever asked the Labor Department to do this for me, nor do I ever, since I've been associated with the Tony and Susan Alamo Christian Foundation for twelve years, ever wanted the Labor Department or expected wages or compensation. It is offensive to me. It offends — I believe it offends my right to worship God as I choose.

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Cross-Examination

By Mr. Fitz

(p. 104) Q. Why did you move from Saugus, California to Dyer, Arkansas?

A. I wanted to be closer to the Church out in Alma and Dyer.

Q. Did you receive a call, for instance, from Mr. Alamo saying, "Mr. Levy, we need you in Dyer" or "we could sure use you in Dyer", or did you just up and move?

A. No, I didn't receive a call from Mr. Alamo saying, "We need you in Dyer" or "could use you in Dyer."

Q. Did you take it on yourself to make the move on your own?

A. Yes. But I first would have to know whether there was housing available for me. I didn't just go out there and hope that there was some sort of a house there.

Q. So let me be sure I understand. You checked to see if there was housing available; you were told there was housing available, and then you made the move?

A. Then I came.

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(p. 114) Q. So, anyway, a few of the Brothers would get together and get a job planting trees, is that correct? And one of the Brothers in the group would bid on the job planting trees, is that correct?

A. Well, when I was there, yeah.

Q. And the Brother that bid on the job, would he get a check from the person you were planting trees for? Would he receive payment from the person you were doing the tree planting for?

A. Yeah.

Q. What would he do with this payment? Would he distribute to the people on the crew or would it turn it in to the Foundation?

A. I believe it was turned in to — we wouldn't distribute it to the people on the crew. We had already decided what we were going to do with the check.

Q. And you decided that it would be donated to the Foundation is that correct?

A. Yeah, part of it would go to the Church.

Q. What would the other part go for?

A. For our benefits.

Q. What do you mean by benefits?

A. Our gasoline, shoes, clothes, hospital bills.

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ANN ELMORE, produced as a witness by and on behalf of the Defendants, having been first sworn, was examined and testified as follows:

Direct Examination

By Mr. Gean

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(p. 119) Q. (By Mr. Gean) You are Ann Elmore?

A. That's right.

Q. And you live at Dyers?

A. That's right.

Q. You are associated with the Foundation?

A. Right.

Q. And you are how old, Ann?

A. Forty-seven years old.

Q. How long have you been associated with the Foundation?

A. Twelve years.

Q. How did you become associated with the Foundation?

A. Well, I was at the beach in California one day, at the age of thirty-five years old, having never heard the gospel of Jesus Christ. And I was a woman who had been twice divorced and I was at my wits end as to what the world had to offer.

And Tony and Susan Alamo and some of the Brothers and Sisters came on the beach that day, and they were preaching the gospel. They told me the gospel of Jesus Christ. It was the first time that I had ever heard that one of these days I (p. 120) was going to have to answer for my life here and I was going to have to just do whatsoever God wanted me to do, that God was real and Jesus Christ had died for the sins of the world. And he had died for me; they told me that.

And for the first time in my life, it made sense to me. And I decided I had tried everything else and I wanted to know if God was really real. And I got down on my knees that day at the beach and Susan Alamo led me through a very simple sinner's prayer. And I repented of my sins and I had a super-natural experience with God that day. I actually felt the heavens open up; I felt my understanding open up; and I felt God; I felt the Spirit of God come down out of heaven; I had a tangible experience. I felt nobody could ever take it away from me. It wasn't man that revealed to me that God was alive, but God himself revealed it to me.

And I got saved. I felt every sin I had ever committed washed away. And I knew that there was something I had to do with the rest of my life, and that was to serve God. I wanted to do things his way.

Q. Before you came with the Foundation, what were your circumstances? How were you living?

A. Well, I had been born and raised in Pennsylvania. When I got out of high school, I married a well to do, well educated young man from Boston. He had been a Harvard graduate; he was on the athletic staff at Harvard

University. I lived a life (p. 121) for ten years in Boston associated with the intellectual type people at the university. I took a lot of courses there. We had a beautiful summer house in New Hampshire and we went to the theatre in New York. I did all the things that a young girl aspires to do when she grows up. I had all the material things that I ever desired.

I knew that something was missing in my life, but I had never believed in God. I had gone to church when I was a Child, but In ever believed God was real. I thought that religion was a crutch; I thought Christians were people who just couldn't make it in the world. And I felt that I had made it, that I had actually achieved something with my life. But in my heart, something was missing.

We just, you know, led a very social type of life, you know.

Q. You and your husband?

A. My husband and I. I went to the teas at the university; we went to Florida in the winter; I had diamond rings that people would look twice at. And —

Q. What happened to your circumstances at that particular period in your life?

A. I had a child that was born mentally retarded. It was my first child, and when he was three years old he died. And I was very upset by that and very heartbroken, because it just never made any sense to me that this had happened. And I began (p. 122) to question what life was really all about and why I had gone through this thing and whatever happened to the child.

I started delving into all kinds of philosophies and psychology and searching into my own mind, thinking I could find some answers in my own heart or in my own mind that would make life worth living.

Q. Did that existence in your marriage which kept you in those circumstances end in divorce?

A. Yes. After seven years of marriage, I divorced my husband just for no particular reason, except that I knew all the things I had acquired in my life just were not sufficient to give me a real reason to live. I knew something was missing.

Q. Then what happened to you?

A. I had gone out — first, I went to school for awhile and I got a job. I had never worked up until that point. I got a job at Harvard University and worked a couple of years, and I remarried.

This time, I married a Harvard attorney, a very brilliant young man. We moved to California and he set up law practice out there. He did very well, had his own law firm in Beverly Hills. And he went up to the top very fast. And we got into the same social type thing on the West Coast as I had been in on the East Coast.

And we adopted a little boy, a baby, and set up housekeeping out there.

(p. 123) It wasn't long before I couldn't understand why all these things that I had — I had everything that a woman could desire. I had, you know, a good marriage. There was nothing specifically wrong with my marriage. I

just knew that I was empty inside and I just could feel a driving for something that I didn't have.

I even delved into drugs at one point in time. And we were in the social set where people had cocktail parties and dinner parties and that sort of thing.

Q. What sort of drugs are you talking about?

A. We started smoking marijuana. And I thought, well, maybe the younger people who have gotten into the drug culture, these mind expanding drugs, maybe I have to see what this is about. So I tried the drugs.

I started out with marijuana; then I tried LSD, just every kind of drug you can imagine. I took LSD just a few times, mescaline, and everything but shoot into my arm; I didn't do that.

But I felt I led a responsible life. I kept a very excellent home; I was a very responsible person. I thought I was a good mother. And I justified my drug taking because I was able to maintain a certain status of living that I thought was acceptable. I wasn't a hippie of the streets and I wasn't out stealing money or anything. I had money of my own. And it was more of a — I wasn't addicted to drugs, but I —

(p. 124) Q. What happened to that situation?

A. Well, after six years I just picked up my young son one day and I told my husband I was leaving. And I just — at the age of, I guess I was about thirty-three years old. I look back on it now and I wonder why I just decided at that point in time I could start all over. But there was just something that seemed to drive me. And I went out

on my own again and proceeded to raise up my son. I didn't work; I was financially independent.

I drove a new Mercedes with a sun roof and I had a beautiful little house near the beach. And I spent my days at the beach and my evenings with friends getting into very involved conversations, trying to figure out the things of the world.

Q. How about the drugs?

A. And continued to smoke marijuana daily.

Q. Take other drugs?

A. Occasionally I took other drugs, yes.

Q. Was it when you were in that situation you were involved and came in touch with the group from the Foundation?

A. Yes, it was during that period of time. My son was four years old and I was thirty-five. I had gone to the beach on a weekend. And some friends — was going to go and take some drugs that weekend with some friends. And I decided against it and I went to the beach.

(p. 125) And I was just sitting there. And Tony and Sue came onto the beach and they told me the world was coming to an end and Jesus Christ was coming back to earth again and that I had to get my soul right with God. And all of a sudden, it just pierced my heart and I knew that everything that I had ever known before that meant nothing, but that those words were the truth. And it was just a marvelous thing. It was like a wonderful revelation.

Q. After that happened — you had this conversion experience that you have given to the Court — what did you do?

A. Well, I decided that whatever I had to do, I wanted to keep that wonderful feeling that I had. I knew I was clean; I knew I had a chance to start my life over again, and this time I knew I could do it right through the power of God, that Jesus Christ was my Savior, and that he would be able to lead me through life.

Q. After that time, were you involved in drugs?

A. No, sir. I never took another drug; I never said a bad word; I never told a lie. I wanted to stay saved. I believed that that feeling that I had, that Spirit of God, I wanted to remain with me for the rest of my life. I knew that whatever I had to do I would do, because I wanted to give my life to God.

Q. And you were associated with the Foundation from the very beginning after your conversion experience?

(p. 126) A. After that, I went to services, and, yes, I was associated with them.

It was six months later that I actually gave up my house and got rid of my own personal belongings and just moved right into the Foundation.

Q. What did you do with the monies you received from your home and from your other belongings?

A. I didn't own a home. I was renting at that time. My belongings I just donated to the Church. I felt anything I could give — I would just have given anything that I had to this Church that I knew was the truth.

Q. Was this requested of you?

A. Oh, no.

Q. Did you say that occurred, the donating of your property, some six months after you had become associated to a degree, after your conversion experience?

A. Yes.

Q. Were you receiving alimony?

A. No, actually I wasn't. I had some money from an investment that I lived off of, and I had a very small amount of child support.

Q. Do you still receive that child support?

A. No, sir, I do not.

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(p. 127) Q. Was that one of the reasons you came with the Foundation, is because your investment had been used up?

A. Oh, no; no, not at all. Susan Alamo had even talked to me. I talked to her on many occasions, and she said it wasn't necessary that I move into the Foundation. I could have stayed out and done everything on my own, but I wanted to give everything I had to God, I mean my heart. And I didn't want to have one foot outside and one foot in. I wanted to be totally involved in the workings of the Foundation, because I knew that God — it was a work of God.

Q. I'm not going to use the word "work", but I would like to use the word "activities." So far as your association with the Foundation at this time, what are your activities? What do you do about the Foundation?

A. Well, my main and sole interest is to preach the gospel to other people who are like I was, that they may have that same thing, that they might be saved. So whatever I do, — the (p. 128) first four and a half or five years at the Foundation, I did nothing but read the Bible and pray. I'd go out in the streets and witness and testify. That was all I did the first five years.

Q. Ann, where did you go out on the streets? Was this in the California area?

A. Yes, sir, in the California area. We'd go to the beaches, go down to Hollywood. We just searched out all those lost and dying souls and preached the gospel to whoever would listen.

Q. Was this a daily activity on your part?

A. Yes, sir, it was.

Q. Was this a religious exercise in accordance with your religious belief?

A. Oh, yes, sir; yes, sir. I knew that all I could do for Jesus would be what would count in this life, that he died for me, and I knew my life — I was so happy with my life and the things that God had done that I knew that's what the world needed, that the world needed Jesus. And I love doing it. There's nothing I love doing more than preaching the gospel.

Q. Do you consider that you are a preacher?

A. I am just a witness for the Lord.

Q. You are not ordained?

A. No, sir.

Q. But you consider this witnessing, and you preach as a source of witnessing, do you do that, Ann?

(p. 129) A. I'm sorry, I don't understand what you mean.

Q. You do preach. I'm not sure how a woman preaches.

A. No, I witness and testify. I've given my testimony in our church services and on our television shows; I've told my testimony just wherever possible, and whenever I meet anybody I always ask the Lord to let me tell them about Jesus.

Q. Did you, during the first four or five years, did you have income of your own?

A. No, I didn't.

Q. How did you live? How were you supported?

A. I was completely and totally supported by the Foundation.

Q. Where did they get their money to do that?

A. Well, it was a mystery to me how the Lord, no matter what we needed, the Lord always provided. The Lord said he would provide; he said, "Take my thought for the things, for your clothing and for your food", and that sort of thing; just seek the Kingdom of Heaven and God would give us everything. And I believed that. I just went into my new life with that in mind, that God was

going to provide, and he did. He provided everything I've had, an over abundance of it, everything I've ever needed and then some that the Lord has provided.

It's hard to say exactly how. God is a God of miracles.

Q. But you performed no activities that brought in money or by way of a service?

A. No, I did not.

(p. 130) Q. For the first how many years?

A. Five years.

Q. And then after that, what did you do? Apparently, you've been engaged in some sort of service since then?

A. Well, after that, the Foundation came out to Arkansas.

Q. Some came?

A. Some people came out, and we decided we were going to build a restaurant and open a gas station to support us out here, because the West Coast and Los Angeles —we just couldn't get the permits we needed to build housing; we didn't have adequate housing and that sort of thing. A lot of us were getting married and people were having children. And we needed—we came out to Arkansas because we had better opportunity to build. And so we came out here and we set up businesses to feed and clothe outselves (sic).

And we worked hard and we built ourselves homes and a school and a cafeteria, just everything that we need, you know.

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(p 131) Q. Ann, do you have anybody associated with your Foundation that asks for money from these witnessing trips and while they are out in the streets?

A. Oh, no, we never ask for money. We give to the people, you know. Jesus came and ministered unto the people. He didn't come to be ministered to; he came to minister. And that's what we do, we go out and we minister unto the people.

Q. When you go out, do you sell trinkets or do you sell things to people?

A. No, sir.

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Q. Is that true with many of those who are associated with the Foundation, they are not involved in what is called outside work?

A. Well, a lot of people—some people have gone out. My husband—I am now remarried. I've been married for six years to a God fearing man who has been with the Foundation twelve years. And he has gone out on occasion and worked and brought (p. 132) in money and just pooled it into the work so that we could build.

Q. Why does he pool his money?

A. Because we need money to build our homes and to support ourselves. We are totally self-supporting. We have never asked any money from anybody. And we believe, if you want to eat, you've got to work. And if he had the money, he certainly wasn't going to keep it for his own personal use. He would just give it. It costs money to build houses and buy furniture and to have a school and buy books and that sort of thing.

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Q. What is the primary purpose of that which you do in the way of service or activity, whatever you want to call it? What is the primary purpose of it, the driving force?

A. It is to keep the gospel spread throughout the whole world, to go and tell others that the world is coming to an end and that nothing else means anything, that there is only one truth, and that if people don't repent of their sins that hell is a reality; there is a burning hell beneath our feet and that heaven is a reality, that heaven actually exists; it's real.

Q. Do you do these things as a matter of religious belief?

A. Absolutely. I believe it more than anything. I know this is the truth and that nothing else is of any value but (p. 133) that.

Q. Ann, you could know it's truth and still not do it as a matter of religious belief, could you not?

A. I'm sorry, I don't understand what you mean.

Q. I'm trying to be a little hard on you, and, really, I don't want to be. These activities—

A. Why would I do it if I didn't believe, if it wasn't my religious belief?

Q. You could do it for the benefits that you receive.

A. If I received no material benefits at all, I would find a way to remain involved in this work, because this is the work of God. I don't do it for the material benefits; I do it because God called me to do it. And he said—he

commanded people to go out and preach the gospel to the four corners of the earth.

Q. Is this the reason your group has associated themselves together?

A. That's right.

Q. To do these things as a matter of religious belief?

A. That's right.

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(p. 134) Q. Were you ever associated with the Foundation in any (p. 135) capacity with the expectation of payment of wages or any sort of compensation?

A. No, sir.

Q. At the beginning?

A. No, sir.

Q. Was there ever anytime that you've been with the Foundation, from the time which you've already given to the Court when you came with the Foundation, was there ever anytime after your association that you've come to expect compensation or wages?

A. No, sir. I can truthfully say it never even so much as entered my mind.

Q. And, of course, you do expect the benefits?

A. Well, the benefits are just a matter of—of course, we went out and we worked for them. And when I first came into the Foundation, we had very inadequate facilities. I didn't come in—I had gave up much more comfortable circumstances in the so-called world than I was coming into. But I was willing to do that. I didn't care if I

never had another material thing as long as I lived. I wanted to do what was right in the eyes of God. I can't expess to you the feeling I had of the difference of my life before I met God, before Jesus saved my soul, and afterwards, that it was worth anything to me. And I knew it was the truth. And no one ever expected any kind of compensation, and the thought is totally vexing to my (p. 136) soul. It would defeat my whole purpose. I have given my life to God, and Jesus had died for me. I owe him my life.

Q. Ann, there's a lot of people that believe that in the Baptist Churches and Methodist churches and other denominational groups.

A. Yes, I realize that. But the Tony and Susan Alamo Christian Foundation is a unique work; it's a work established very much like the first church that is written of in the Bible, and where we pool our things and we pool our resources, and we got together and we set ourselves up so that we would be self-supporting and go out and preach the gospel.

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Q. Was anybody or has anybody been forced to make any contribution or give some properties to the Foundation, to your knowledge?

A. No. Most people who came to the Foundation came in with nothing. I came in with very little. And, no, the Lord just—we went as we were, and the Lord accepted us the way we were. It didn't matter what kind of life we came out of, but we had a common experience together. We all knew that Jesus was our Savior and we started out from there.

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(p. 138) Q. The laws of the land. The Secretary of Labor says you are to be paid.

A. Well, they are wrong. I don't know where they got the idea. I don't know who asked them to come in my defense that I should be paid for the way I've decided to give my life. I know the abortionists today believe your body is your own; the Federal law says your body is your own, you can do whatsoever, and it's perfectly all right to go out and have an abortion. If I want to donate my body to the service of the Lord, that's my business.

I don't believe in the abortion laws, but I do believe I have a right to serve God the way my heart dictates.

Q. Is that what you are doing in the Foundation?

A. Yes, sir.

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(p. 140) I did, I volunteered my time waitressing (p. 141) at our restaurant. And I loved working up there, because I was a witness for the Lord. The public came in there, and I got to tell people about Jesus. And I won a lot of souls at the restaurant, and I preached the gospel to every single person I could.

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(p. 144) Q. During the course, does anyone from the Foundation and during the course of these broadcasts or these tapes, do they make a pitch for money and ask for money?

(p. 145) A. No, we've never ever asked for money. We take an offering at our church services because it's a Commandment of God, and it's really so that if you give,

God can bless you. We have never solicited for money from anybody; we are totally self-supporting; we have never taken one penny from the Federal Government or from any of these agencies. There are a lot of people on welfare these days. We don't believe in that. We believe you can go out and make your own way. The Lord has taken care of all our needs.

Q. Do you have some people there that are not able to work or aren't able to do physical work or due to mental or emotional problems?

A. There are a few people. I know a couple of people who are legally blind and what they can do is limited.

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EDWARD MICK, called as a witness by and on behalf of the Defendants, having been first sworn, was examined and testified as follows:

Direct Examination

By Mr. Gean

(p. 156) Q. How did you become associated with the Foundation?

A. I was running a narcotic dope den in Hollywood, California, where I would go out and sell narcotics and drugs on Sunset Strip, Hollywood Boulevard, and I had ten other people working for me selling drugs. And they would bring me the money back. I ran this dope den for almost a year and a half or so.

Q. At that young age?

A. Yes. And I would smuggle heroin and also marijuana across the Mexican Border. That was during the period of time that the ———— were in Mexico. And I made quite a bit of money off of it. But it resulted in

a very expensive narcotic habit for myself. My morals had decayed to the point I had no inhibitions, no moral fiber at all; my principal thing, which was selling drugs to people, getting them on drugs, of if I couldn't sell it to them, I would give it to them. And it seemed that anybody's life that I had gotten involved with, somehow I would destroy it with the drugs, to the point that I would sell drugs to some individuals who had overdosed and died as a result of that.

My life was very torn because of no moral values. I was raised in the state of Arkansas, educated in the state of Arkansas. My father was with the Criminal Investigation Department of the Blytheville Police Department. He had groomed (p. 157) me for West Point. But at the age of seventeen, I was mainlining hard drugs right to my arm.

That's when I went to California and opened this narcotic dope den and started smuggling. I was on the streets for I guess a year and a half or two. And Mr. and Mrs. Alamo—at that time I would see them out on Sunset Boulevard, Hollywood Boulevard, passing out gospel literature. And on a number of occasions I had even received gospel tracts from them, which I'd stick in my pocket and go about my merry sinful way.

I had gotten arrested by the Los Angeles Police Department and busted for they had found one kilo of drugs in my place, which I didn't even know was there. They would come in and break the doors down with fire axes, twenty or thirty police officers. And they tried to bust us for over a year and a half.

On this one occasion, there was a kilo of drugs in there. I was arrested, booked, taken to the Los Angeles Police

Department, put in jail. And a friend of mine who knew Mr. and Mrs. Alamo, I did not know them, went and told them I was in jail for pushing narcotics and drugs, that they had finally busted me.

Mrs. Alamo said she would do anything possible to help get me out so she could spend one hour with me to tell me the gospel of Jesus Christ, which I found out later after I became a Christian. I didn't know nothing about this at the time.

I went through the courts and they turned me loose on the (p. 158) streets. Within days, I was back out selling narcotics and drugs, shooting people up.

And after three or four days, this mutual friend took me over to Mr. and Mrs. Alamo's house. It was a shack behind a shack that was leaning several blocks off Hollywood Boulevard.

I walked in the door. It was decorated just very beautifully. Mr. and Mrs. Alamo greeted me. Tony extended his hand to shake hands with me. I came in and sat down. They preached to me the gospel of the Lord Jesus Christ.

I had attended churches throughout my childhood here in the south, the Bible Belt, all the basket socials, all the church functions, but I did not know that the blood of Jesus Christ could take away all my sins and was the answer to my problem.

When I would go to churches, their solution to me was to get a haircut and a job.

But, of course, Mr. Gean, my problem ran much deeper than a haircut and a job. My soul was sin-sick.

Mr. Alamo gave me his testimony and told me about the Lord Jesus Christ; Mrs. Alamo came in and she said, "Ed, you may escape every court of law down here on this side of eternity with what you are doing, destroying the lives of other human people." She said, "But at the judgment bar of God, you will stand accountable for every person's life you destroy with narcotics and drugs, and your soul will wind up in eternal (p. 159) burning hell."

Mr. Gean, when I heard that, I did some soul searching. I thought, well, I never thought that God is all loving, all forgiving, that he loves everything that I do, because I was the kind of animal that would—if somebody would overdose in my house, I would take them and dump their body. Nothing bothered me. I would wonder at times, "Why don't I have feelings like normal people?" I was just so calloused by sin.

Of course, living in Hollywood, California, you see just about anything and everything. I was nineteen years old, practically going on fifty. Sin had just hardened my life to the point I just didn't care if I lived or died.

At the time, I had contacted hepititis from using dirty needles, shooting up cocaine and heroin. And I was very sick; I was sick unto death; I was puking my guts out in the streets. I didn't have enough sense, nor was I not loaded on drugs to the point so that I could even ascertain how bad my condition was. However, I was jaundiced when I finally got to a doctor.

But when I heard Mrs. Alamo say that and she told me, she said, "You know, God hears one prayer of the unsaved, the Sinner's Prayer, the prayer of salvation."

I said to myself, "Well, God, if you are up there, show me." I said, "I really need a personal experience. If you are up there, show me. My life has gone haywire and I've destroyed the lives of anybody I've ever come in contact with in one form or another, and if (p. 160) you are up there, please help me."

I got down on my knees, Mr. Gean, and I said the Sinner's Prayer, "My Lord, My God, come into my heart. I believe you are the Son of God, Jesus. I believe you died on the Cross and shed your blood for the forgiveness of all my sins. I believe that God raised you from the dead by the power of the Holy Ghost. I believe that you sit at the right hand of the Father making intercession for my sins. I know you have heard me; I know you have answered me, and I believe your word, the Bible."

Q. Did Susan lead you in this?

A. She most certainly did. I will never forget it. When I said that prayer, Mr. Gean, I felt something come over me like I've never felt before. I actually got scared. I felt the presence of the Spirit of God. I mean, I felt the burden of guilt and sin and the degradation in my life leave me. I felt clean, but I was scared and I felt the Spirit of God upon me. And I went to the door and I thanked them, and I was trying to get out the door and fiddling with the lock.

And I explained to Mrs. Alamo, I said, "I'll see you folks again." She said, "Ed, remember one thing. You are saved by the blood of Jesus Christ and that is your testimony."

Mr. Gean, that was the first Bible scripture I'd ever heard that I paid any attention to. As I walked back to

the dope den, I was running; I thought of the twenty to thirty (p. 161) people over there that I was supporting off my drug sales, as far as food and drugs and whatever.

I thought, "When I go back over there, I'm going to have to tell these people what happened to me, because I feel different inside. The Lord has truly saved me this day."

I had a motorcycle gang, chapter of the Hell's Angels, four or five of them standing over there, and we just partied continuously for in excess of a year or year and a half, it seemed. I went back over there and I told these people, I said, "I've had a supernatural experience today. Now, you know me; I haven't taken no acid or anything, but something has come over me." I said, "I met these two evangelists and they told me about Jesus Christ. And I got down upon my knees and I said the Sinner's Prayer. And when I did", I said, "I got saved." I said, "Let me tell you, I feel different. I want you people to meet these two people." I said, "I feel so good."

I said, "I'll tell you what, I'm going to get all the drugs out of here, all the guns out of here."

We had even so much as thought of having a shootout with the Los Angeles Police Department. At the time, we were planning for that. I said, "I want to get all this stuff out of here, the drugs, the guns, the booze, everything." I said, "I want you people, each of you, to take a shower and clean up and I am going to invite these two ministers over here to talk to you."

(p. 162) Well, everybody got a big kick out of it. But they decided that since I was the boss, they would go along

with it. So some of them, it was their first bath, some of them, they'd had maybe in ninety days.

Mr. Gean, I invited Mr. and Mrs. Alamo over. I didn't know if they'd even go along with this at the time. But I went back to them. I said, "Tony, Sue, would you two come over and tell these people at the dope den I'm running what you told me about the Lord and the Bible?"

Tony and Susan said, "We'd be delighted to take the gospel of the Lord Jesus Christ to those people."

That was four or five days after I was saved, they came over. Prior to that, I would go over there every day and I asked Mr. Alamo questions about the Bible, the Word of God. I would take a stenographer's pad with me. I was hungry; I wanted to know what God required of me in my life. And Tony would tell me what the scriptures say and he would tell where it was in the Bible, because I had to see for myself; I had to know. And I would look it up. I would read it and it was just like food, the bread of life to my soul.

So Mr. and Mrs. Alamo came over to Carlos Avenue, the dope den that I was running. And they preached the gospel, the hell fire and brimestone version. Every person's hand in the dope den raised and they received Jesus Christ in their heart as a personal saviour.

(p. 163) Q. All of them that were there that day?

A. There was in excess of thirty.

I talked Mr. and Mrs. Alamo, I said, "Would you come over and teach us Bible, tell us what God requires of us?" All of them were eager. They said, surely, they would. A

Christian lady donated thirty or forty folding chairs; another Christian man donated a piano and some gospel song books.

That narcotic dope den that I was running that the Los Angeles Police Department and Narcotics Division tried to break up for a year and a half became our first church. We started having services there every night. Mr. and Mrs. Alamo would come in and read the Bible, teach us.

We would, in turn, go out and take gospel literature upon the streets of Hollywood, California, and pass them out to the other young people, "Hey, man, you don't have to live out here like a dog on the streets and die off drugs. There's hope and life in Jesus Christ."

Mr. Gean, we would bring them in in droves to services. Even during the course of our gospel services, which Mr. and Mrs. Alamo would lead every night, people would knock on the door during the services coming over there, and I'd open the door and let them in. They'd want to buy drugs from me, and I would say, "Just come in and sit down. I'll talk to you later about that. Sit down right here and listen to what's going on."

(p. 164) They'd wind up giving their hearts to Jesus Christ at the altar call, become born-again Christians, go out into the streets and get others.

And I saw many people's lives changed from the destruction of narcotics and drugs and see them kneel down right there at the altar and Mr. and Mrs. Alamo lead them to Jesus Christ, and see the glory of God shine upon their face, see them become new creatures right before me.

Mr. Gean, I've destroyed so many people's lives on narcotics and drugs that I feel a great necessity to go out and tell others. It's stuck with me now for thirteen years. And that is my principal activity with the Tony and Susan Alamo Christian Foundation.

Q. Did you say you lived in the Dyer area on Georgia Ridge?

A. I live on Georgia Ridge. I have a three bedroom home, rock home, overlooking a five acre lake, that is newly built for me and my wife. I have a little boy five years old. We have a beautiful home, washer, dryer, furniture. Mrs. Alamo came in and decorated it. Or, she's done such a beautiful job. It has a custom built fireplace, plush carpets.

Q. Who built the house?

A. Mr. and Mrs. Alamo built it for us.

Q. Did the associates —

A. Many of the Brothers and Sisters wanted to work on it, partake of the house-raising. I myself put the rock on it, (p. 165) learned how to do masonry work, put a great deal of the rock on it. Many of them were just eager and said, "Hey, I'd like to work on your house." "Thanks a lot."

They would come up from time to time until it was built.

Q. Is this the way you all perform these services or helps to one another?

A. People volunteer to do so, yes. Nobody is solicited; they volunteer.

Q. What do you do in the way of service or activities for the Foundation?

A. I witness and testify. I go out on witnessing chains, hospital wards, intensive care wards, to the streets, the highways, the byways, pass out gospel literature, and compel people to come into the house of the Lord.

Q. Do you do anything else with the Foundation?

A. I do some other activities if I am needed, or if I see a place where I can volunteer my services, I cheerfully do so.

Q. Have you ever worked at the restaurant?

A. Yes, I have on occasions. I've gone in and fry cooked, wherever I could help out.

Q. Who assigned you to those duties and responsibilities?

A. Well, Mr. Gean. I volunteered to do so. It wasn't that I was assigned or scheduled or anything like that. I would see a need and I would volunteer my services.

Q. It's difficult for me to understand how you can operate (p. 166) as many ventures as you have on that type of arrangement.

A. Well, Mr. Gean, when everybody is in a Christian spirit and willing to volunteer their services, it does work. It works quite effectively.

Q. Do you solicit money?

A. Oh, no, under no circumstances. Mr. and Mrs. Alamo have always taught us, when we were out in the streets, on many occasions people offered to give money, to just tell them no. We're not out there for that; we've never

solicited money on our television show, out in the streets, and if people even offer it, we've told them, "No. We're not here to receive money or anything like that. If you feel you should tithe, you can mail your tithes in." It's a great Christian testimony, because, you see, so many people are just out soliciting, and we never have done that. We don't believe in that.

• • •

(p. 168) Q. (BY MR. GEAN) The activities in which you are involved with the Association is motivated by what purpose? By what reason?

A. To spread the gospel of the Lord Jesus Christ.

Q. Is that a matter of your belief?

A. It most certainly is.

Q. Is it possible for you to keep records as to what you do for you to continue the efforts that you have in regard to (p. 169) your beliefs, the activities you have, the efforts you have in regards to your beliefs, the presentation of your religious beliefs? Can you keep records of everything you do?

A. No.

Q. On how many jobs do you work or how many efforts are you involved during the course of a day's time?

A. First of all, Mr. Gean, I don't really look at it as work. It's a service of love. I come out of such horrible sin and everything, I feel that my endeavors are directed toward winning other souls, and it's my responsibility. And it's strictly just a service of love to spread the Christian endeavors of the Tony and Susan Alamo Christian Foundation.

• • •

(p. 175) Q. (By Mr. Gean) Mr. Mick, what expectation have you had of pay or wages or compensation for the services or activities you have performed on behalf of the Foundation?

A. I have never ever had any expectations of compensation nor wages. When I came to this Church, I was dying. You couldn't put a dollar price on anything like that. I owe my life to the gospel and missionary field and the endeavors of spreading the gospel of this church. Nobody owes me anything. I am the one who owes.

Q. You don't expect compensation at this time?

A. I would not even consider it.

Q. Do you expect compensation for some of your activities in the future?

A. Never ever.

• • •

TONY ALAMO, called as a witness by and on behalf of the defendants, having been first sworn, was examined and testified as follows:

Direct Examination

By Mr. Gean

(p. 198) Q. Tony, would you tell the Court how many families or approximately how many families are dependant and are associated with the Foundation?

A. I don't have any idea.

Q. Are they numerous?

A. Yes.

Q. And these families are depending entirely on their substance from their association together in the Foundation and the Church of Tony and Susan Alamo Foundation?

A. As they have testified, some of them go out on outside (p. 199) jobs to help provide for everyone there. But, yes, they have built their homes there, their homes, their church, their cafeteria; they have put in roads, developed all that area, and their whole life is wrapped up into the Foundation property.

• • •

(p. 202) I mention that we have a church, we have people there also.

Yesterday, we won over three hundred souls in Chicago. I've been told by Bob Jones University, Oral Roberts' people, and Billy Graham people that we we win—we're the strongest soul winning work in the country.

Q. Tony, these activities, businesses, or whatever they want to be called, have been determined to be related to the Foundation and exempt activities?

A. The IRS said they were all related to the Church.

Q. Have you been checked by IRS since the Certificate of Exemption was awarded to you?

A. We've been continuously checked by them. And they have dismissed all investigations on us. They have found that what we said we spent the money on, we did. We have—Sue and I never owned anything, not even the clothes on our back. We have corporate resolutions for

everything at the Foundation. They were all in order, and they dismissed—we have letters from them dismissing us from their investigation, two different letters from them.

• • •

(p. 204) Q. Are the persons associated with the Foundation, do they come voluntarily to the Foundation, these people referred to as volunteers or associates?

A. Yes, they do. Well, just the month that my wife was so ill in the hospital, we won thirty thousand, four hundred, some-odd souls. Out of that, maybe one person volunteered to come to the Foundation to work. And we go a lot to rest homes where people are 80, 90, 100 years old. There's no hope of us ever gaining any monetary value from them or for them to—we are not in the business to build homes. I mean, we are not out to get people to come to the Foundation, to feed people. And those that volunteer, that say they really want to serve the Lord with all their heart, soul, and mind, and body, that really want to become evangelists, that want to become pastors, that want to give their life to the Lord, then they have to convince us without a shadow of a doubt before we ever take them in.

• • •

(p. 205) Q. That are not in any way serving so far as performing work or activities or services for and on behalf of the Foundation (p. 206) or the Church, is that not right? There is many people in that category?

A. That is correct. Sometimes they will say, "If there is anything you people—or if you're on a new project, we can come in for a day or maybe a half day", and we wouldn't ever stop them from doing that if they wanted

to, just like any other church. If they attend and expressed a desire to help out a day or two, or for that matter every day, but occasionally there will be people that will volunteer to do things like that.

Q. You mentioned you go into the rest homes and the jails and you don't solicit any money?

A. Absolutely not.

Q. Have you ever even received any money from the rest homes or the jails or the people in the detention homes where you have served?

A. Well, the boys have told me that in some of them, they have said they wanted to give them some money. And the boys, I have just instructed them that if they wanted to, they just won't take it, that they could put it in the mail. So far, to my knowledge, I don't check on that, but I don't have any knowledge of any finances or money that we have received from them. We never drive for finances at all. We love to just support ourselves.

• • •

(p. 207) Q. You've explained how the people came—would come to your association as volunteers, ministers, pastors, and this type of activity. Are those people free to leave at any time they want to?

A. Absolutely.

Q. Do they leave?

A. As I said, only if they have a great desire to go on in the ministry, the gospel field, have we the interest in doing the things that we do, build homes for them and so on. They (p. 208) have to be extremely dedicated in

that respect. The job issue in doing all these other things is very minute, or their ability to be able to function in any type of work is not at all required. It is their desire to serve the Lord.

Q. On any one particular job or one activity or one venture, are they assigned to do that for a specific period of time, or are they free to leave that and go to some other?

A. No, they are not assigned. If everyone sees the weeds growing up around the place, one of them will say, "Let's pitch in and get these weeds down. It could cause a fire hazard around here. We don't want to see our places burned down." They see it's getting a little busy over at one other place, they will run over there and help out. It's kind of wherever the problem exists they will go over and volunteer to do whatever needs to be done.

Q. Is that true as to the operation of your restaurant and your service station?

A. Yes, sir.

Q. Sewing facility and so forth?

A. Yes, sir.

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VOLUME III

ROLLIN SHELL, called as a witness on behalf of the Secretary of Labor, after being first duly sworn, testified as follows (Mr. Shell's testimony began on page 27 of Volume III):

Direct Examination

By Mr. Fitz

• • •

(p. 61) Assuming for a minimum wave of $2.30 an hour in 1976, and assuming the Foundation has three hundred inside uncompensated workers who worked sixty hours a week for fifty-two weeks, have you computed how much minimum wages and overtime is due for them?

A. I did.

Q. Do you have that with you?

A. No, I don't have it with me.

(p. 62) Let me show you a document that has given to me entitled "Estimates, Three Hundred Employees, Sixty Hours per Week." Can you identify that document?

A. Yes, sir. I made it.

Q. Did you compute, based on the estimates, assuming the minimum wage of $2.30 an hour, three hundred workers employed for sixty hours a week for fifty-two weeks, what they should have been compensated in minimum wages and overtime?

A. Yes, sir.

Q. What was that for 1976?

Mr. Gean: Your Honor, we will object to that. His question was based on sixty hours a week. I'd like to know how he came up with that, why he says sixty hours a week.

Mr. Fitz: Your Honor, that is based upon the depositions that were received in evidence yesterday. There was some fluctuations, some evidence in the depositions that they may have worked as many as sixty or sixty-five hours a week. Some evidence they may have worked as few as fifty-five hours, but, by and large, the average of sixty

hours a week is based upon the deposition testimony. We have used an average of sixty hours a week.

The Court: Okay, go ahead.

Mr. Gean: If Your Honor, please, note our exceptions to that.

The Court: It seems to me like the objection goes to (p. 63) The Court: (continuing) weight to be given the testimony as opposed to its admissibility. Certainly, this witness is competent to give the end product of his calculation.

Mr. Gean: Your Honor, I did not understand. Are you introducing the sheet which he used?

Mr. Fitz: I was planning on using his testimony.

Q. What did you compute in minimum wages and overtime compensation to be due to these three hundred uncompensated inside workers for 1976?

A. $2,511,600.00.

Q. What was the minimum wage in 1977?

A. The same.

Q. $2.30 an hour?

A. Yes, sir.

Q. Using the minimum wage of $2.30 an hour and assuming the Foundation had three hundred uncompensated inside workers who were employed for sixty hours a week for fifty-two weeks, can you tell us how much minimum wages and compensation are due?

Mr. Gean: Again, we will raise the same objection.

The Court: You can have an objection all the way through.

Q. Can you tell us how much pay at the minimum wage and overtime is due for 1977?

A. $2,511,600.00.

• • •

(p. 64) Q. Using the minimum wage of $2.65 in 1978, and assuming the Foundation had three hundred uncompensated inside workers who were employed for sixty hours a week for fifty-two weeks, can you tell me what the minimum wage and overtime compensation you have calculated to be due to them?

A. That figure would come out to $2,893,800.00.

Q. What was the minimum wage in 1979?

A. $2.90.

Q. Using the minimum wage of $2.90 an hour in 1979, and assuming the Foundation had three hundred uncompensated inside workers who were employed sixty hours a week for fifty-two weeks, could you tell us what they would be due in minimum wage and overtime compensation?

A. $3,166,800.00.

Q. What was the minimum wage in 1980?

A. $3.10.

Q. Using the minimum wage of $3.10 an hour in 1980, and assuming the Foundation had three hundred uncompensated inside workers who were employed sixty hours a week for fifty-two weeks, can you tell us how much in

minimum wages and overtime compensation they would be due?

(p. 65) A. $3,385,200.00.

Q. What was the minimum wage in 1981 and 1982?

A. $3.35.

Q. Using the minimum wage of $3.35 in 1981 and 1982, and assuming the Foundation had three hundred workers who were uncompensated and who worked sixty hours a week for the sixty-five weeks between January 1, 1981 and April 1, 1982, can you tell us how much minimum wages and overtime compensation are due?

A. $4,572,750.

Mr. Fitz: Your Honor, I have no further questions of Mr. Shell at this time.

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Cross-Examination

By Mr. Roy Gean, Jr.

(p. 95) Q. Mr. Shell, have you ever investigated any other group, whether it be a business, profit, non-profit institution that has what is called volunteers or persons who work without the expectation of pay?

Mr. Fitz: Your Honor, I object to that on the grounds it is not relevant. It is not a matter before the Court.

The Court: That is overruled.

Mr. Gean: (continuing)

Q. Can you answer my question?

A. Yes, sir.

Q. Can you give me the names of them?

A. Every hospital has the Gray Ladies. Salvation Army has volunteers. United Christian Associates has volunteers. I've been in numerous hospitals where the Gray Ladies were.

Q. Have you ever claimed the Gray Ladies should be paid?

A. No, sir.

Q. Have you ever claimed the volunteers of the Salvation (p. 96) Army should be paid?

A. I never have run into the volunteer question out there. I haven't been in an area where that was present.

Q. I am sure you are acquainted with the activities of the Salvation Army. It has various corporations. The Southern Corporation is located in Atlanta, Georgia, and they have a huge network of Salvation Army citadels across the South. Are you acquainted with that?

A. Yes, sir. Generally familiar with it.

Q. And they have people that volunteer in there?

A. I don't know. I haven't had the opportunity to find that out.

Q. You have never been requested to investigate it?

A. No.

Q. And never have investigated it?

A. I have activities in the government contracts.

Q. I am talking about as to volunteers?

A. No.

• • •

(p. 97) Q. You have been with the Department for over twenty-five years and I am sure you go to meetings of other investigating officers such as yourself, and you discuss this matter with attorneys and with the various persons in an administrative capacity with the Secretary of Labor. Have you ever heard of them, people who have volunteers, being investigated?

• • •

(p. 98) Q. Can you answer the question? Go ahead and answer?

A. Yes, sir.

Q. You have heard of them being investigated?

A. Yes, sir.

Q. Have they ever required that those volunteers be paid? I am talking about the Secretary?

A. I don't know the outcome, no, sir.

Q. Do you have any knowledge of any of them ever having been subjected, by the Secretary of Labor, to a requirement to pay or request to pay those volunteers?

The Court: Wait a second. Are you talking about the Moonies and people like that? Haven't there been investigations of the Moonies and haven't there been requirements by the Secretary of Labor that they pay?

Mr. Gean: There haven't.

The Court: I thought you cited me a case.

Mr. Gean: That was *Turner vs. The Unification Church.* That was an individual that brought that case

under Section 216, which was the same principle of law would apply. The 217 is the injunctive relief requested by the Secretary, and the 216 is the right under the same set of laws for the individual (p. 99) to bring the action. In that particular case, *Turner vs. Unification Church*—

The Court: I read the case.

Mr. Gean: —it was clearly said she was a volunteer and she did not expect compensation, and her claim was dismissed or her cause of action was dismissed. And it was upheld in the circuit court.

The Court: It was not upheld on that basis, though. Let's don't argue about that case. Go ahead.
Mr. Gean: (continuing)

Q. There's been investigations that you know of in these areas about which we have just been discussing?

A. There's been investigations in all areas that I've heard of. Now, being able to quote one, I don't know.

Q. Have you ever in your own experience requested or found that these organizations about which we are speaking should pay the volunteers any sum by virtue of the Fair Labor Standards Act?

A. Yes, sir.

Q. You have requested that?

A. Now, when you are talking about organizations, are you talking about what we are investigating?

Q. I have described the type of organization we are talking about. We have mentioned the Salvation Army, and I think you mentioned Abilities Unlimited and you mentioned hospitals. (p. 100) Q. (continuing) Perhaps

you mentioned others, but those are the ones that come to my mind now. And you have investigated that type of institution?

A. Occasionally, yes.

Q. And you have directed that they pay the volunteers?

A. I have directed them to pay all people that was on a clear—If they was producing goods for commerce in their operation and it was a part of an integral operation, if they contacted the public, did the work on that, yes, sir, I would generally do that.

Q. You would generally do that?

A. Yes, sir.

Q. Who have you done that with?

A. Well, Mercy Hospital in Brownsville was one.

Q. Brownsville, Texas?

A. Yes.

Q. You required that they pay volunteers, is that what you are telling this Court, people who do not expect compensation?

A. No. I am not saying that.

Q. That is what I am asking you, Mr. Shell. Maybe I am not making it clear to you.

A. We are not getting together on it. What I am saying is that people who would ordinarily be considered volunteers weren't, in fact, volunteers. They had made an agreement to be paid. We've had a lot of that. And they were drawing pay.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

BEFORE:
HONORABLE WILLIAM R. OVERTON
UNITED STATES DISTRICT JUDGE

NO. 77-2183

RAYMOND J. DONOVAN
SECRETARY OF LABOR
UNITED STATES DEPARTMENT OF LABOR
Plaintiff

V.

TONY AND SUSAN ALAMO FOUNDATION,
TONY ALAMO, SUSAN ALAMO, AND
LARRY LAROUCHE
Defendants

TELEPHONE DEPOSITION OF
DONALD MCLEAN WYLIE
Tulsa, Oklahoma

April 6, 1981

REPORTED BY DAVID G. HARJO, CRS, RPR

APPEARANCES

For the Plaintiff:

Robert Fitz, Esquire
Office of the Solicitor
555 Griffin Square Building
Dallas, Texas 75202

For the Defendants:

Roy Gean III, Esquire
Gean, Gean & Gean
500 First America Building
Fort Smith, Arkansas 72901

Donald McLean Wylie, having first been duly sworn to tell the truth, the whole truth and nothing but the truth, was examined and testified as follows, to wit:

Direct Examination

By Mr. Fitz:

• • •

(p. 8) Q. What were you doing with the Foundation when you were located in Arkansas?

A. Any of a number of things. But from '76 to '78 (p. 9) when I left, I was involved with the — what they called the "work crews," you know, framing buildings, putting roofing — you know, putting roofs down in Fort Smith.

Q. During this period of time, where did you live?

A. I believe that from '76 to '78 Kathy and I lived in a house that was called "The House on the Ridge" in Des Arc, Arkansas.

Q. When you say you worked with the framing crews during this period of time, would you please tell me what the framing crews were and what you did?

A. The framing crews were crews of construction people that would go downtown and bid out a job and we'd go ahead, you know, four or five of us would come in and do the job and then look for another job.

Q. What name would you bid out the job under?

A. It was Alamo Construction, usually.

Q. How many framing crews were you aware of that were doing this?

A. Approximately four to six, maybe seven.

Q. And how many members were on each crew?

A. It varied, of course, but from three to seven. If it was a big job, maybe ten or fifteen.

Q. Would the crews be made up entirely of members of the Tony and Susan Alamo Foundation, or would there be other people on the crews?

(p. 10) A. No, just members of the Foundation.

Q. How many days a week did the crews work?

A. Six.

Q. And what time in the morning did the crews get started?

A. We'd get up about 5:00 in the morning and eat breakfast and be on the job by 6:30.

Q. How late in the evening did the crews work?

A. Until the sun went down usually. 7:00.

Q. Was there a break for a midday meal?

A. Yeah, there would be a break for lunch.

Q. How long would that break last?

A. From a half an hour to an hour.

Q. Did the crews ever do any work after the sun went down?

A. Oh, yeah. We wouldn't work on the jobs in the City of Fort Smith after the sun went down. We'd come home, eat, then go work on a Foundation project.

Q. Was that every day of the week for six days of the week?

A. Yes, sir.

Q. How late would you work on the Foundation project?

A. Depending on the agency — from 11:00 to 2:00 in the morning.

(p. 11) Q. Do you know whether or not any records were kept of the hours the members of the framing crews worked?

A. No, there were no records kept.

Q. Were the members of the framing crews paid any wages?

A. No.

• • •

Q. How did the members of the framing crews know which crew they were going to work on and where they were going to work? Were there any instructions given by anybody in the Foundation as to what was to be done?

A. Well, I remember on many occasions that during—Tony would get a finance list at night and "brothers" that were in charge of these various crews would submit lists of people that — to work on these crews and he would assign who was to work where.

• • •

(p. 12) Q. Were there any members of the Foundation that were in charge or in a supervisory capacity?

A. They might oversee the situation but, no, nobody was delegated any authority to tell anybody what to do, no.

• • •

(p. 13) Q. Have you ever heard the expression, "outside workers" in connection with the Foundation during the period from January 1st, 1976 through June 1978?

A. Yes, sir.

Q. What does the term "outside workers" mean to you when it's used in connection with the Foundation?

A. Now, there are one of two meanings it could well have been. I'd heard it many times. But one was people that worked for a wage that weren't really actually members of the Foundation. When we needed some expertise in an area, for example, a shaft or somebody to run a business that we were just starting and didn't know anything about, they would get a paycheck at the end of the week, and they were considered "outside workers."

(p. 14) Although at the same time, the people like myself that worked in the crews downtown were thought to have worked for "outsiders."

• • •

(p. 21) Q. Are you familiar with about how many other people were associated with the Foundation in Alma or Des Arc, Arkansas since January 1, 1976?

A. The number would vary, but as a rule it was somewhere from 150 to 300 people.

Q. How many of these people were actually working in the different businesses that the Foundation operated?

A. It's a guess, but I'd say that 80 percent — well, 70 to 80 percent of the people in Arkansas would work the businesses.

Well, no, if you're going to consider Alamo Construction as part of the businesses, then I guess 100 percent.

• • •

Cross-Examination

By Mr. Gean

(p. 22) Q. Mr. Wylie, what was your contact about this case?

A. I don't know. It just appeared. The Labor Department called and that was about it.

Q. Why did the Labor Department call you?

A. To ask me if — if I could give them any information.

• • •

(p. 26) Q. And you were disassociated, I believe you said, sometime in June. You said June 1st, 1978, or in June of 1978, is that right?

A. Yes, sir.

Q. And what caused the disassociation?

A. Just disillusionment with what was happening.

Q. And how long had you been disillusioned?

A. It was — it was a gradual matter. I started to notice things — I don't know when exactly — you know, it's just a matter of building on itself.

Q. And it took some seven or eight years for it to build?

A. No. The disillusionment didn't start until toward the end there.

(p. 27) Q. And when was that?

A. Oh, probably in the last three years.

Q. What way was there disillusionment?

A. Just in the misleading statements and the use of the finances and the like.

Q. Who made the misleading statements?

A. Tony and Sue.

Q. Who?

A. Tony and Sue.

Q. Anybody else?

A. Well, only inasmuch as they were their vocal — they spoke for Tony and Sue.

Q. Uh-huh. And what were those misleading statements?

A. Oh, any of a number of things having to do with money as a rule.

Q. Can you be specific?

A. Okay. One specific would be an announcement over the pulpit to the effect that money was being sent to missionaries in Africa, which just wasn't the case.

Q. When was it that those statements were made?

A. Probably in the last year I was there, although that's a guess.

Q. All right. Any other such statements?

A. Just — just statements that were made early in (p. 28) the game that came — you know, that didn't come to pass. For example —

Q. Can you tell me what those are?

A. Oh, they were promises to the effect that we were going to be ordained as ministers and be sent out and all that sort of thing early in the —

Q. Who gave you that promise?

A. Either Tony or Sue, I don't know which.

Q. You don't remember which one?

A. No, although I would guess it was Susie, since she's in charge.

Q. Well, when was that?

A. Oh, that was very early in the game that those statements were made, although —

Q. Back in early 1970?

A. Yeah, the '70's.

• • •

(p. 30) Q. How were you living?

A. I have an income from a trust that supported me.

Q. Do you still have that income?

A. Yes, sir.

• • •

(p. 32) Q. I don't believe I got your address there. Would you give it, please.

A. Gee, I'd rather not.

Q. Why?

A. Because they'll show up for sure.

Q. Who will show up?

The Witness: Mr. Fitz, are you there?

Mr. Fitz: Yes, Iam.

If Mr. Wylie is fearful of retaliation, I think this would be an appropriate matter to let Judge Overton decide as to whether or not he should be compelled to give his address.

Mr. Gean: I mean, as far as where they're actually ing over there, I think it's probably common knowledge, probably in the phone book, isn't it?

The Witness: No, it's not in the phone book.

Q. And are you in the City Directory?

A. No.

Q. How long have you lived there?

A. Three years.

Q. And you refuse to give your address because

• • •

(p. 33) A. No.

Q. —fearful of retaliation?

A. No, I'll go ahead and give it because I suspect that they know where I live. I live in the Graduate Housing, and my address is 7712 B, as in "Big," South Victor, 74136.

Q. What's the 74136?

A. That's the zip code.

Q. And that's in Tulsa?

A. Yes, sir.

Q. And you and your wife live there?

A. Yes, sir.

Q. Do you own that place?

A. No, sir. It's a rent.

Q. And what it is, an apartment?

A. Yes, sir.

Q. I think they know where you live, don't they?

A. Yeah, that's why I'm going to go ahead and give you the address.

Q. But you were fearful of retaliation. What is it that indicates to you that they would retaliate?

A. Just, you know, they've gotten nasty with people that have given them trouble in the—

Q. Have they ever with you?

(p. 34) A. Not so far, no.

Q. Who have they gotten nasty with?

A. Oh, John Malone in California and Mrs. Wizel, a lady who years ago brought a suit against them, they threatened her with rape and all the rest of it.

Q. What have they threatened John Malone with?

A. That was—they directly didn't threaten them. I think one of the members of the Foundation that had the impression that John Malone had told Tony and Sue that they were—that this person was an inside connection, this person left the Foundation to go and get, as it were, John Malone.

Q. Now, is this Tony and Sue Alamo have made these statements or made these threats?

A. No, I don't think so. They have a way of prompting people to do things without really telling them directly what to do.

Q. Well, who actually made the threat to John Malone?

A. I don't think it ever became a threat. I think the story—now, this is all hearsay, you know. What I hear is—

Q. Where did you hear this, John Malone?

A. Yeah.

Q. And he was telling you about what other people (p. 35) had done in the way of making threats to him, is that correct?

A. Well, he told me about this incident. I don't think it really did come to a threat in the final analysis.

Q. Well, what was the incident?

A. One of the people in the Foundation, Tony and Sue—the story has it, now, this is hearsay—

Q. This is from John Malone?

A. Right.

Q. All right.

A. Someone in the Foundation was told by Tony and Sue that he was a connection, that John Malone had told someone that he was a connection inside the Foundation to filter information out. This person got upset, left the

Foundation, I hear, armed, and went up to Modesto, California and tried to call John at his real estate agency. John wasn't in, and he asked John—you know, he left a message for John to meet him somewhere in Modesto.

John got suspicious and didn't show up. And then later in time one of the people in the Foundation that left —you know, that was there during this incident, told John Malone what had transpired.

• • •

(p. 42) Q. Did you ever sign an affidavit in this particular case that we're involved now in regard to the (p. 43) taking of your deposition?

A. I don't remember signing an affidavit, no.

Q. Do you remember in January of 1978 of signing any documents?

A. Well, I just—

Q. In regard to this particular case?

A. No, I can't remember having done so. I might well have but I just don't remember.

Q. Well, one of the paragraphs in it reads as follows, maybe this will refresh your memory.

"I state on oath that all work, labor, services or the like which I may have performed for the Tony and Susan Alamo Christian Foundation was done and performed by me strictly as a volunteer."

Does that help refresh your memory?

A. No, I don't ever remember signing that, no.

Q. "I state that at the time of performance of such work, labor or services, I had no agreement for the receipt

of salary or wages and that I did not expect to receive salary or wages and that such activities as I may have pursued were accomplished for my own satisfaction and not for the expectation of salary or wages."

Do you remember that?

A. Am I supposed to have signed this before I (p. 44) left?

Q. Well, it was in—I think you said you left in June of 1978, and this is dated the 15th day of January, 1978.

A. Well, I sure don't remember signing that, no.

Q. Well, is that true?

A. Well, I just don't remember signing it, no.

Q. Are the statements that I read to you true?

A. Well, I knew I was going to get no wages, yeah, that's true.

Q. Sir?

A. I knew good and well I'd get no wages.

Q. Well, did you do these services as performed strictly as a volunteer as stated here, is that true or false?

A. That's a hard one to answer.

Q. No, sir, it isn't. It shouldn't be.

A. Restate the question.

Q. Is this statement, that the work, labor or services performed by you were done and performed by you strictly as a volunteer, is that true or false?

A. Inasmuch as I knew I was getting no wages, I suppose you could call me a volunteer, right.

Q. Well, what did you call yourself?

A. I thought I was working for the Lord.

(p. 45) Q. So yours was—you thought this was a Christian endeavor, is that right?

A. Yes.

Q. A Christian movement.

A. Uh-huh.

Q. Now, since that time you have apparently decided that it is not.

A. Right. Over a period of time I came to realize that was the last thing that it was.

Q. Now, from the time you came with the Foundation in May, June, July or August of 1970 until sometime in 1978, you thought it was a Christian foundation or a Chrisitan effort, but after that time, after sometime in 1978 you decided contrary-wise, is that correct?

A. Well, yeah, over a period of time I came to realize that my efforts weren't being channeled into anything that was gospel oriented, no. I came to realize that, and that's why I left.

Q. Well, did you come to realize that by January the 15th, 1978?

A. Fully.

Q. Sir?

A. Well, that was the point at which I was able to make myself leave finally, yes.

• • •

(p. 47) Q. You had income of your own then, while you were at the Foundation?

A. Yes, sir.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

BEFORE:

HONORABLE WILLIAM R. OVERTON
UNITED STATES DISTRICT JUDGE

NO. 77-2183

RAYMOND J. DONOVAN
SECRETARY OF LABOR
UNITED STATES DEPARTMENT OF LABOR
Plaintiff

V.

TONY AND SUSAN ALAMO FOUNDATION,
TONY ALAMO, SUSAN ALAMO, AND
LARRY LAROUCHE
Defendants

TELEPHONE DEPOSITION OF KATHY ANN WYLIE
Tulsa, Oklahoma

April 6, 1981

REPORTED BY DAVID G. HARJO, CSR, RPR

APPEARANCES

For the Plaintiff:
Robert Fitz, Esquire
Office of the Solicitor
555 Griffin Square Building
Dallas, Texas 75202

For the Defendants:
Roy Gean III, Esquire
Gean, Gean & Gean
500 First America Building
Fort Smith, Arkansas 72901

KATHY ANNE WYLIE, having first been duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

Direct Examination

By Mr. Fitz

• • •

(p. 8) Q. When you made up the schedule for the girls working in the restaurant, how many shifts were working there?

A. For a while when we first opened the restaurant, and I would say through '76 at least—see, it varied. Some of the girls—five or six or seven of the girls would work anywhere from twelve to sixteen hours a day, and then there would be others that would come in and just fill in during the busy times.

So it varied. There was two definite shifts. There was one that started 7:00 in the morning and went anywhere from 8:00 to 12:00 at night, and then there was another shift of four girls that worked from 12:00 to 7:00 the next morning.

Q. How many days a week was the restaurant open?

A. It was open seven days a week.

Q. Did these shifts work on all seven days a week, or did they have any days off?

A. The only time that you had off was if you took turns going to the Sunday services, which were between 3:00 and 5:00 on Sunday.

Q. You mentioned the sewing room across the street from the restaurant. What did you do in the sewing room (p. 9) since January 1, 1976?

A. Well, I was in charge of making up the schedule for the girls in the sewing room and just checking up to make sure that everybody was there, getting the money approved for the different garments that had to be made to buy the materials to make them.

Q. How many girls worked in the sewing room?

A. Oh, it would range anywhere from nine to sixteen, seventeen. It always depended on how much work we had to get out. If you weren't working in the restaurant, you just floated more or less over to the sewing room, wherever you were needed; whichever place was the busiest is where we would place the girls.

Q. How many days a week was the sewing room in operation?

A. It was open seven days a week. It all depended, sometimes we'd work three and four days straight in a row without any sleep or even a break.

Q. How frequently did that happen?

A. Pretty frequently when the—I would say in '76, an awful lot, because that's when the store had not been open that long and we were doing a lot of special orders.

Q. What would happen to the clothes that were made in the sewing room?

(p. 10) A. They would be sent to Nashville or to the store there in Alma, usually to Nashville though, and they would be sold.

Q. When you weren't working around the clock in the sewing room, was there any generally scheduled starting time there in the morning?

A. Yes, you had to be at work between 8:00 and 8:30, and the average day you worked until 8:00 at night. And if you were what they called the "main sewer," a person that cut out a lot of the patterns or knew how to do a lot of the specialized work, it was not uncommon to work until 12:00 or 1:00 in the morning.

Q. And you mentioned the grocery store. Did you work any in the grocery store?

A. I worked in the grocery store only when it first started, just helping stock and do miscellaneous.

Q. Was this after January 1, 1976, or before January 1st?

A. I—you know, I can't remember. I'm not sure of the date.

Q. When you were working in the restaurant, sewing room, clothing store and the grocery store—I don't think I asked about the clothing store.

Did you work in the clothing store in Alma?

A. I worked in the clothing store in Alma. (p. 11) Originally it was across the highway from the restaurant. Then it was moved over to the same side the restaurant was on, next to the gas station, and that's when the girls started working in there, and we did the stocking and tagging, things like that.

Q. What was the starting time for the workers in the clothing store?

A. It opened at 10:00 and was open until 2:00 A.M.

Q. Would the workers in the clothing store be there all during that period?

A. There was about four girls that worked there, and I would say about two out of the four would work until the 2:00 A.M. and the other two would go home, usually around 10:00 or 11:00. It all depended on how busy it was.

Q. Going back to the grocery store. When you worked there, how many people were working in the grocery store?

A. I would say about four at the time. There were two main ones and two that were not the main ones.

Q. What hours was the grocery store open since January 1st, 1976?

A. If I remember right, I think the grocery store was open twenty-four hours, seven days a week.

Q. Was this on a shift schedule also, like the (p. 12) restaurant with different shifts of workers coming in?

A. Yes, to my knowledge there was two shifts.

Q. You mentioned making out the schedules for the girls.

After the schedules were made out and the girls actually worked, were any records kept of their hours of work?

A. No. The only records were the paper that I made the schedules on, and I would tell the girls individually what hours they were working. I never kept any of them.

Q. Were the girls that were working in these various businesses paid any wages, to your knowledge?

A. No, they weren't.

• • •

Cross-Examination

By Mr. Gean

(p. 16) Now, you were 18 when you came to the Foundation?

A. I think I just turned 18 in December.

Q. And you had never been married?

A. No.

Q. You married a Mr. Seay, S-E-A-Y?

A. Under Susie's instructions, yes.

Q. Oh, she instructed you in that?

A. Yes, she did.

Q. You did not voluntarily do that?

A. No.

Q. Where were you married?

A. In the Foundation.

Q. Who married you?

A. Tony and Sue.

Q. And what happened to Mr. S-E-A-Y?

(p. 17) A. Susie threw him out.

Q. Why?

A. Because he was trying to convince me to leave. He did not believe that what Tony and Sue were doing was scriptural, was ethical, and I would not leave. I thought that — at the time that it was — it was very— what Tony and Sue were doing was very right and I did not agree with him, so Susie asked him to leave.

Q. So you stayed there?

A. Yes.

• • •

(p. 18) Q. I believe you stated that you had had a deposition taken before.

A. Yes, I have.

Q. Where was that?

A. It was a Nashville attorney when Lydie Wizel was bringing a lawsuit against the Foundation.

• • •

Q. And actually where were you residing at that time?

A. I was living in Nashville with Tony and Sue.

Q. Is that what your deposition shows?

A. I think so. Unless at the time I was supposed to have given the Solveys' address, I can't remember what I was instructed to do at the time.

(p. 19) Q. Uh-huh.

A. I might have given the Solveys' address.

Q. Was your statements not true, or were they the statements of others?

A. I have read it since I have left, and I would say a lot — I was not at any freedom at the time of that deposition to say what I wanted to say.

Q. Who was present when the deposition was taken?

A. Tony was.

Q. He was in the room?

A. Yes, if I remember right.

Q. And was he instructing you what to say?

A. I had been instructed by Susie before I went as to what to say.

Q. And you didn't tell the truth, you told what Susan told you to say?

A. To my knowledge, the only thing — the thing that I lied — yes, I did lie on it.

Q. You did?

A. Yes, I did.

Q. Under oath?

A. Yes, I did.

Q. Well, do you understand what the taking of an oath is?

A. Well, at the time when I was in the Foundation (p. 20) you're taught that if it furthers the gospel then it is not a lie, and I really believed that.

Q. Who taught that?

A. Tony and Sue teaches that.

Q. And did they teach that to others as well as to yourself?

A. Yes. We have all lied many times on the court — on the stand.

Q. We have "all"?

A. Yes, a lot of the members of the Foundation.

Q. Who else have lied on the stand?

A. Well, for instance, when we had a — when the Health Board tried to close us when we had our church at Crescent Heights in Hollywood, California.

Q. Tell me some of the other people that lied on the stand?

A. Well, I'd have to — I would have to look back on the records and see who else was on the stand, but all of us were instructed as to what to say. We all lied.

Q. All of you lied?

A. Yes, we did.

Q. And that was out in California?

A. Yes.

Q. You don't remember any names?

(p. 21) A. Oh, I remember some, yes.

Q. Give me their names.

A. Oh, I remember Ed Mick, Tom Gorbea —

Q. All right.

A. — myself.

Q. Who?

A. Myself.

Q. All right.

A. And I can't remember specifically who else they were but I know that we were all instructed as to what to say before we took the stand.

Q. And who instructed you?

A. Tony and Sue.

• • •

(p. 22) Q. When they took your statement in Nashville, Tennessee for some case you said, Mrs. Wizel was suing the Foundation —

A. Uh-huh.

Q. — did you tell the truth in that?

A. No, I did not.

Q. Did you think you were?

A. Yes, at the time. I thought I was protecting the gospel.

Q. What did you tell that was not the truth in your statement at Nashville?

A. They asked if — if that the whole episode was pre-planned, and I said "No," but it was.

Q. What episode?

A. The beating up of Lydia Wizel. I told them in my deposition that she attacked us and that she came to the church to cause trouble, and it was not true.

Q. And that was an untrue statement?

A. Yes, it was.

Q. What else in there?

A. Oh, and the fact that Sue had instructed us (p. 23) as to what to do before Lydia ever got there, and we were only following orders. And I asked if we were, if Susie knew anything about it, and I said, "No, that Tony and Sue did not even know anything about the incident and Susie was on the phone in the church the whole time during the incident."

Q. Did anybody else know about that?

A. Yes.

Q. Who?

A. The girls that were involved with me.

• • •

Redirect Examination

By Mr. Fitz

(p. 41) Q. Mrs. Wylie, why did you leave the Foundation in the middle of the night at three o'clock in the morning?

A. Because we were afraid of physical violence, physical harm to us.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

BEFORE:
HONORABLE WILLIAM R. OVERTON
UNITED STATES DISTRICT JUDGE

NO. 77-2183

RAYMOND J. DONOVAN
SECRETARY OF LABOR
UNITED STATES DEPARTMENT OF LABOR
Plaintiff

V.

TONY AND SUSAN ALAMO FOUNDATION,
TONY ALAMO, SUSAN ALAMO, AND
LARRY LAROUCHE
Defendants

TELEPHONE DEPOSITION OF
RICHARD T. HYDELL
New York, New York

April 9, 1981

REPORTED BY BRADLEY SELF,
S & S REPORTING CO., INC.

APPEARANCES

For the Plaintiff:

Robert Fitz, Esquire
Office of the Solicitor
555 Griffin Square Building
Dallas, Texas 75202

Francis V. LaRuffa, Esquire
United States Dept. of Labor
1515 Broadway
New York, New York

For the Defendants:

Roy Gean, Jr., Esquire
Gean, Gean & Gean
500 First American Building
Fort Smith, Arkansas 72901

RICHARD T. HYDELL, having been first duly sworn by a Notary Public of the State of New York, was examined and testified as follows:

Direct Examination

By Mr. Fitz

• • •

(p. 9) Q. While the brothers in the foundation in California were working in Bakersfield — in the fields, were they drawing paychecks?

A. Yes, pretty much. They would work at different farms, whether it was Superior or Armstrong or whatever, the nurseries that they were — they would be paid by check and then, they would give it to the foundation.

If it didn't work like that, then, a (p. 10) lump sum was given to the person in charge of the crew and that was turned over to the foundation.

Q. How about the construction jobs in Los Angeles that you described?

A. Okay.

If they were working on a construction job, they would probably go bid it out like most construction crews. If they received the job, then, they would do the job. When it was finished, usually, as far as I know, one check was made out to whoever was in charge of the crew, one of the particular brothers and then, it was taken up to the office and given to the office, the people in the office.

• • •

(p. 14) Q. You said you left California in about May, 1977.

Can you tell us why you left California?

A. I was called out to Arkansas, like most people are.

Tony and Sue pretty much tell people, or (p. 15) they do tell people where to live, where to go, what jobs to do, and I got the word to go to Arkansas, and I went.

Q. How did you get from California to Arkansas?

A. Commercial airline.

I used commercial airlines sometimes when travelling, if I had to go to a fashion show, if I had urgent business with Tony, otherwise I went by foundation vehicle, which was probably a car or a van.

Q. And when you got to Arkansas, what did you do?

A. I reported to Tony and Sue and I was told, I would be on the construction crew and I started working with the construction crew.

Q. How many members were on the construction crew?

A. I would say about ten.

I'd say about, and I usually use the term, a rough estimate, because people switched jobs once, fairly often and of course, it was at the direction of Tony and Sue, but it was an average of about that amount, that I am giving you.

Q. Was there anybody in charge of the con- (p. 16) struction crew?

A. I believe Mike Borac was in charge.

Q. How do you spell that name?

A. I think it's Mike B-O-R-A-C.

Q. What type of construction activity was the construction crew engaged in?

A. Usually, laying slabs for buildings, driveways, building block walls, most basic construction type of jobs.

Q. How long did you work for the construction crew?

A. I would say about four — about four months, four and a half months.

Q. About how many hours a day did you put in working while you were working for the construction crew?

A. It averaged about twelve.

Q. How many days a week was that?

A. I would say six.

Q. Were any records kept of your hours of work when you were working for the construction crew?

A. Not that I was aware of.

Q. Were you paid any wages while you were working for the construction crew?

(p. 17) A. No.

Q. Did the foundation receive any monies from the construction job that you were working on, to your knowledge?

A. Yes. Well, if we went to a job and the job was bidded out for a certain amount of money and the construction crew got the okay to do the job, at the end of the job, usually, one lump sum was given to whoever was in charge and that was, in turn, given to the foundation.

Now, part of my time with the construction crew, I worked on foundation business which was the foundation clothing store in Arkansas.

Q. All right.

After you worked on the construction crew, what did you do?

A. I went with the Fort Smith Mobile Nursery, which is a part of the foundation.

Q. What part of the activities was it engaged in?

A. Well, the nurseries constructed jobs for different people in the Fort Smith and surrounding area. If they were given the job, they would go, automatically do the job, commercial, pretty much private (p. 18) houses.

Q. How many people were on the Fort Smith Mobile Nursery crews with you?

A. Between four and six, depending on the weather.

Q. Was anybody in charge of that crew?

A. I believe Gary Waller (phonetic spelling) was.

Q. How long did you work on the Fort Smith Mobile Nursery crew?

A. I would say about five months.

Q. And can you tell us about how many hours a day you worked while you were on that crew?

A. I would say it averaged about twelve hours a day, six days a week.

Q. Were any records kept of the hours you worked when you were working on the Fort Smith Mobile Nursery crew?

A. Not to my knowledge.

Q. Were you paid any wages when you worked on that crew?

A. No.

Q. Do you know if Fort Smith Mobile Nursery received any monies or income from the various people (p. 19) that you were doing landscaping for?

A. Once the job was finished that the mobile nursery contracted out and then, that money was given to whoever was in charge of the crew and that was taken up to the foundation's office and then turned in.

Q. What did you do after you were working for Fort Smith Mobile Nursery?

A. I went on Alamo Expert Roofing, another part of the foundation.

Q. How long did you work for Alamo Expert Roofing?

A. I would say four, four and a half months.

Q. What did you do for Alamo Expert Roofing?

A. I helped with the roofing of homes, industrial buildings, things of that nature.

Q. How many people worked with you in that job?

A. I would say on the average, four or five.

• • •

(p. 22) Q. Have you ever heard the term outside workers in connection with the foundation?

A. The only time I can recall that term being used is, if there was a particular job that had to be done for a particular business, within the foundation and they, if — if someone didn't know how to do this, then, they would hire someone, not necessarily until the job was done, but until the brothers or sisters could get an idea on how to do the job and then, I believe, that is what the term outside workers was used for.

• • •

Cross-Examination

(p. 50) By Mr. Gean

Q. During that period of time, did you go to the worship services that you were associated with in the foundation during that time?

A. Right.

Q. How often did this occur?

A. Well, in the beginning, it was every (p. 51) night.

Q. Did you go in the morning also?

A. If there was a service in the morning and Tony wanted people there in the morning, yes, I went.

Q. And how long did the services last?

A. It varied. It could be anywhere, I would guess, from an hour to two, more close to two.

Q. That is the evening services?

A. Yes.

Q. That is every night?

A. Right, and twice on Sunday.

Q. What about in the morning?

A. Well, in the morning, it was usually, if Tony had called a meeting to — everybody there to discuss different things that he wanted to discuss or Sue wanted to discuss.

Q. Now, did you have bible study periods other than these times, which I have referred to, as a worship time?

A. Sure.

Q. How much time did you spend in bible study?

A. Well, in the beginning — well, it varied (p. 52) from the time I got there until afterwards, and I stayed — I would say it averaged in the beginning, to a couple of hours a day. Maybe more. It went up to three or four, easily.

• • •

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

BEFORE:
HONORABLE WILLIAM R. OVERTON
UNITED STATES DISTRICT JUDGE

NO. 77-2183

RAYMOND J. DONOVAN
SECRETARY OF LABOR
UNITED STATES DEPARTMENT OF LABOR
Plaintiff

V.

TONY AND SUSAN ALAMO FOUNDATION
TONY ALAMO, SUSAN ALAMO, AND
LARRY LAROUCHE
Defendants

TELEPHONE DEPOSITION OF RALPH J. MALONE
Modesto, California

April 14, 1981

REPORTED BY AMY MANGES, #5296
APPEARANCES

For the Plaintiff:

Robert Fitz, Esquire
Office of the Solicitor
555 Griffin Square Building
Dallas, Texas 75202

For the Defendants:

Roy Gean III, Esquire
Gean, Gean & Gean
500 First America Building
Fort Smith, Arkansas 72901

RALPH J. MALONE, being first duty sworn by the reporter-notary, testified as follows:

Direct Examination

By Mr. Fitz

• • •

(p. 5) Q. When you were working as a driver, how many days a week were you working?

A. Usually six, but sometimes seven.

Q. And how many hours a day were you working?

A. Well, that was flexible also. It was usually—started from around nine o'clock in the morning and would end around midnight.

Q. Were any records kept of your hours of work when you were a driver?

A. No.

Q. Were you paid any wages when you were a driver?

A. No.

Q. When you were working at the—you say it was a clothing store on Vine?

A. Yes, sir. It was pronounced The Alamo.

Q. Alamo on Vine? What hours were you working?

A. From nine in the morning until twelve midnight.

Q. How many days a week was that?

A. Six.

Q. Were any records kept of your hours of work?

(p. 6) A. No, sir.

Q. Were you paid any wages?

A. No, sir.

Q. Was anybody else with you when you were working at the clothing store?

A. Yes, sir, there were usually about anywhere from four to six men working there.

Q. Do you recall who they were?

A. Steven King, Marty Stanton, Chas. Williams, I'm trying to think. Richard Hydel, and I don't remember the other names.

After August, 1976, where were you located?

A. In Dyer, Arkansas.

Q. Why did you move from Saugus, California, to Dyer, Arkansas?

A. I was told to do so by the Alamos.

Q. What were you doing in Dyer, Arkansas?

A. First I worked at the Bandito, which is a clothing store and this was in Alma. I lived in Dyer, but worked in Alma at the clothing store.

Q. How far was Alma from Dyer?

A. Oh, I would guess maybe six, seven miles.

Q. And what hours did you work in the Bandito Clothing Store?

A. Well, a regular day would begin at nine and end at midnight, but every other day about I would have to spend the night there.

Q. Were any records kept of your hours of work when (p. 7) you were working at the Bandito—working at the clothing store?

A. No, sir.

Q. Were you paid any wages?

A. No, sir.

Q. Was anybody else working at the Bandito Store with you?

A. A man named Tom Huddnel.

Q. Was he also working an alternating schedule—staying over night every other night?

A. Yes, but now that I think about it, we sometimes—we couldn't do it every night. Sometimes we could get somebody to volunteer to do it for us, but not very often.

Q. Would it be as much as once a week?

A. That we had to stay there?

Q. No, would it be as much as once a month that you would get somebody to volunteer?

A. Yes.

Q. Would it be fair to say that you stayed at the Bandito Clothing Store every night for three nights a week?

A. Yes, I would say that is more than fair.

Q. How long did you work at the Bandito Clothing Store?

A. About a month, a month and a half.

Q. And what did you do after you worked in the Bandito Clothing Store?

A. I worked for Alamo Construction.

Q. How many days a week were you working for Alamo Construction?

(p. 8) A. Six, sometimes seven.

Q. And what were your hours of work at Alamo Construction?

A. Well, they varied, but usually about from around seven in the morning until maybe seven or 7:30. Whenever it got dark or whenever it was time to go to the evening prayer meeting.

Q. Were any records kept of your hours of work at Alamo Construction?

A. No, sir.

Q. Were you paid any wages when you worked at Alamo Construction?

A. No, sir.

Q. How many other people worked with you at Alamo Construction?

A. Oh, that's hard to say. Maybe 15, 20, maybe.

Q. Was anybody in charge of the work at Alamo Construction?

A. Well, not really. All the orders came from Tony, but he had a guy that was there. His job was kind of to report to Tony what was going on and to execute his orders after his responses to the problems. His name was Mike Borack.

Q. I beg your pardon, could you spell the last name?

A. I thinks it's B-o-r-a-c-k. I'm not sure.

Q. How long did you work of Alamo Construction?

A. About a year.

Q. What did you do after you worked for Alamo Construction?

(p. 9) A. About a year.

Q. What did you do after you worked for Alamo Construction?

A. I worked at the Alamo Kerr McGee.

Q. What were you doing at the Alamo Kerr McGee?

A. My job varied. Sometimes I just serviced the cars, checked the oil, pumped the gas, and then for a time I was running the cash register there.

Q. Where is the Alamo Kerr McGee located?

A. On the Highway 71 in Alma.

Q. Where is that in proximity to the Alamo Restaurant in Alma?

A. It's next to it. There is a parking lot that separates them.

Q. Where is that in proximity to the Bandito Clothing Store in Alma?

A. About a mile up the road.

Q. What were your hours of work when you were working at the Kerr McGee Service Station?

A. From about eight o'clock in the morning until around seven or 7:30, when the prayer meeting started, and then usually we would go back after the prayer meeting which would get out around ten, and then we would work until about twelve.

Q. How many hours a day was the service station open?

A. 24.

Q. Would anybody be attending the station when the prayer meeting was going on?

(p. 10) A. Yes.

Q. How many people would be in attendance when the service was going on?

A. Well, there were usually about four or five people pumping gas. Two guys at the cash register, and during the day, there was a mechanic in the lube bay, and I don't think there was one at night. I don't believe they had one at night, so in the day it would have been about eight people. At night about seven.

Q. Was there any reduction in the number of people at the station when the prayer services were going on?

A. No.

Q. Were any records kept of your hours at work at the Kerr McGee Station?

A. No, sir.

Q. Were you paid any wages when you worked there?

A. No, sir.

Q. How long did you work at the Kerr McGee Station?

A. I really don't remember. Maybe three, four months.

Q. What did you do after you worked at the Alamo Kerr McGee Service Station?

A. I began working at the Alamo of Nashville in Alma.

Q. What part were you at the Alamo Nashville in Alma?

A. It's a clothing store like they have in Nashville. Like the one on Vine Street in Hollywood.

Q. What were you doing in the clothing store?

A. I was a salesman.

(p. 11) Q. What were your hours of work at the clothing store?

A. From nine in the morning until midnight.

Q. Were any records kept of your hours of work?

A. No, sir.

Q. Were you paid any wages?

A. In a way. We got—let's see, we got credit that was good in any of the stores. For I think 10 percent of whatever. No, it wasn't 10 percent, I think it was five percent. For what we sold.

Q. I am not sure I understand how this works.

A. It is confusing. It's—I would make a sale, then write a little slip of paper out for five percent of that sale and that would go down as credit, and I could take that slip across the street to the grocery store and buy some hamburgers or something with it.

• • •

(p. 15) Q. Have you ever worked for Fort Smith Nursery?

A. Yes, I worked there for about a month.

(p. 16) Q. What did you do at Fort Smith Mobile Nursery?

A. I was just kind of a handyman. I helped out these other guys that kind of started the business for Tony. I just helped them, whatever they needed done.

Q. Who were those two people who worked for Tony Alamo?

A. Robert Testa and Gary Waller.

Q. Did you ever do any landscaping for Fort Smith Nursery?

A. Yes.

Q. How long did that last?

A. About a month.

Q. You were working for Alamo Construction or Fort Smith Mobile Nursery?

A. Excuse me, I don't know the difference between the two. I'm sorry. I thought it was all Alamo Mobile Nursery.

Q. Have you ever heard the term Fort Smith Mobile Nursery?

A. No, sir, I never have.

Q. When you were working for the nursery, what hours were you working?

A. Well, it was—it varied. We would usually leave after breakfast, around maybe nine or so and work until dark.

Q. Were any records kept of your hours or work when you were working for the nursery?

A. Not that I know of. Unless Gary and Bob were keeping some private records. I don't know of any.

Q. Were you paid any wages when you were working for the nursery?

(p. 17) A. No, sir.

Q. How many days a week were you working for them?

A. Six.

Q. Would you say that lasted about a month?

A. Yes, sir.

Q. How many other people were working for the nursery when you were working for it?

A. Just Bob and Gary.

• • •

(p. 19) The Witness: May I say something. I just wanted to clarify something about the wages. Everybody got $5 a week, sometimes. So, if that's important, I don't know.

Mr. Fitz: When you say, "they got $5 a week," was this a work payment?

A. Yes.

Q. All right. Did all of the brothers and sisters get (p. 20) $5 a week to your knowledge?

A. Well, most of them, but that was cut off because as punishment for things that people may have done wrong. They were fined and the only way we had to pay the fine was to get our $5 a week, and some of the fines exceeded $30,000.

Q. What sort of things would you be punished for?

A. Oh, just millions of things. Anything Tony decided was wrong. Saying the wrong thing to a customer, giving out too much information about the foundation that could be damaging, spilling gasoline on the ground if you worked there. Breaking something, getting in an automobile accident, anything.

Q. When something like that happened, what would the amount of the fine be?

A. It depended on whatever Tony said it was. It was arbitrary, there was no set thing.

Q. Can you give me any idea of what the range sometimes would be? For instance, you mentioned $5 a week for wages.

A. Yeah, well, the fines would usually start at about 10 or $20. They would go up. I have—I knew people that had fines up to $30,000. At $5 a week.

• • •

Cross-Examination

By Mr. Gean

(p. 23) Q. Why did you decide to become associated with the foundation?

A. Well, because at the time I was pretty worried about the world myself at the time, and this seemed to me to be some sort of an answer, I was also frightened by the prospect of being in hell for eternity.

Q. Were you on any type of drugs prior to your association with the foundation?

A. Yeah, I drank some, and I smoked some marijuana, and I tried LSD, I think three times.

Q. Was this one of the reasons for your becoming with the foundation for some type of rehabilitation?

A. No, sir, because I wasn't taking that many drugs. I mean I was just like all the other kids in those days, I was trying it once in a while. I wasn't a heavy user.

Q. What was your thoughts about becoming associated with the foundation? What was the purpose of your association?

(p. 24) A. To help educate the world about Christ. I felt that that was the answer, and I was told by the people in the foundation that the foundation was the only

way that I could spread that word. I saw it as the only answer for the world problems.

Q. I have gone through hopefully all the activity that you have been involved in with the foundation as far as working. Were you also required to read the Bible associated with the foundation?

A. Well, it wasn't a thing where somebody was standing over you. At first when I first joined, yes, you were required to read the Bible and pray at regular set times. But later on toward the end of my stay in the foundation, it was just a thing. There was so much work to do that you just did it whenever you had the time.

Q. Were you also encouraged to attend church service during your association?

A. Yeah, they had two, one in the morning and one at night. You were encouraged to attend at least one of them.

Q. Were these attendances encouraged after August, 1976?

A. You mean these—

Q. In other words, after August, '76 you were required or encouraged to attend service twice a day?

A. I was encouraged to, but not if it interfered with the job you were doing. That always came first.

Q. Had you attended church service?

A. Sometimes. But not on a regular basis, because (p. 25) many times I would be too busy. You see, the thing that you need to understand is that after you get through with your regular job, then they want you to go do some-

thing else connected with one of the other businesses. Sometimes when they are shorthanded and then at night, they want you to do a night watch for two hours, to watch the property. So it is nothing I can generalize on.

• • •

(p. 27) Q. When you traveled or—well strike that. Were your children's clothes, while you were associated with the foundation, provided by the foundation?

A. No, the kids who were clothed by the foundation were kind of, as my wife said, "rag muffins." They had old hand-me-down stuff. My parents and her parents sent us money and that's how we handled that.

• • •

(p. 28) Q. What was the purpose for your departure from the foundation? Why did you leave?

A. Because I began to believe that Tony and Susan were using religion as a means to make money and were hiding under the Bill of Rights. I thought we were all being used and in ways that were very harmful to us.

• • •

(p. 30) Q. How many hours a day go back to the beginning of 1976, how many hours a day did you spend in Bible reading?

A. At the most one hour.

Q. One hour a day?

A. At the very most.

Q. Okay, seven days a week?

A. I wouldn't say that, no.

Q. Six days?

A. I would say maybe three, four.

Q. Three days a week?

A. Yeah. It was just catch as catch can, you know.

Q. Church attendance? What were the times of the church meetings?

A. One in the morning. I believe it started at eight and then let out just whenever. They usually lasted an hour or an hour and a half, and then one at eight o'clock at night. And then a service, I think they had just one service on Sunday. No, two.

Q. After 1976, pardon me. On an average, after 1976, how many hours a week did you spend in church attendance?

A. Well, some weeks—are you counting the prayer (p. 31) meetings as church attendance?

Q. Yes.

A. Maybe six, seven hours a week.

Q. Six or seven hours a week?

A. Yeah, maybe.

Q. Are you including in that all the meetings that might be religious connected?

A. Yes.

Q. You stated—

A. But sometimes it would vary, because when Tony or Sue were in town, quite often what would have only lasted for an hour if we had been conducting it, for the service would last for sometimes five hours, even six. That didn't happen often, but sometimes it did. So the time spent would vary.

• • •

(p. 32) Q. You stated that you also not only worked for the Alamo of Nashville in Alma, but you also worked for a clothing store by the name of Bandito?

A. Yes.

Q. You stated you were on a five percent commission at the Alamo of Nashville in Alma?

A. It may have been less. It may have been one percent, I don't remember.

Q. What—but it was a percentage commission?

A. Yes.

Q. Were you also on a commission with the foundation on or while you worked at Bandito?

A. Yes, yes I was. Not the first time, I worked at the Bandito, but the second time.

Q. And that percentage was credited to your account at the other activities that the foundation carried on?

(p. 33) A. That's a way of putting it, yeah. That's as good as any I have heard, yeah.

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Redirect Examination

By Mr. Fitz

(p. 34) Q. Have you ever—were you ever aware of anybody being brought into the foundation and being paid wages when a brother os sister wasn't capable or qualified of doing it?

A. Yes, sir, they had a cook at the restaurant. It happened on several occasions. I can't name them all, I was only vaguely familiar with what was going on, but I saw that happen, yes.

Q. Do you know whether or not those people were ever referred to as outside workers?

A. I don't know. I don't remember what we used to —if we even had a special name for them.

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

BEFORE:
HONORABLE WILLIAM R. OVERTON
UNITED STATES DISTRICT JUDGE

NO. 77-2183

RAYMOND J. DONOVAN
SECRETARY OF LABOR
UNITED STATES DEPARTMENT OF LABOR
Plaintiff

V.

TONY AND SUSAN ALAMO FOUNDATION,
TONY ALAMO, SUSAN ALAMO, AND
LARRY LAROUCHE
Defendants

TELEPHONE DEPOSITION OF DEBRA MALONE
Modesto, California

April 14, 1981

REPORTED BY AMY MANGES, #5296

APPEARANCES

For the Plaintiff:

Robert Fitz, Esquire
Office of the Solicitor
555 Griffin Square Building
Dallas, Texas 75202

For the Defendants:

Roy Gean III, Esquire
Gean, Gean & Gean
500 First American Building
Fort Smith, Arkansas 72901

DEBRA MALONE, being first duly sworn by the Reporter-Notary, testified as follows:

Direct Examination

By Mr. Fitz

• • •

(p. 4) Q. The period that we are interested in is only the period from January 1st, 1976 to the present time. So could you please tell me what you were doing with the foundation in January, 1976?

A. I believe I was working in the sewing room there in Saugus.

Q. I'm sorry, I couldn't hear the last portion of your answer, you said the sewing room?

A. In Saugus, Saugus, California.

Q. What was the sewing room?

A. It was a place where a lot of the girls worked, sewing, making special order outfits for the Alamo of Nashville, and we kept the stores supplied with different

(p. 5) types of western wear, and we — that's what was our main job.

Q. Where was Alamo of Nashville located?

A. At that time it was located in Nashville, Tennessee.

Q. What were your hours of work at the sewing room in California?

A. From there, about ten o'clock in the morning until about midnight or one o'clock in the morning.

Q. Were any records kept of your hours of work when you were working in the sewing room?

A. No, there were none.

Q. Were you paid any wages?

A. No, we weren't.

Q. How many days a week did you work in the sewing room?

A. We worked six days a week and sometimes we worked on Sundays.

Q. Would that happen very often when you would work on Sundays?

A. No.

Q. Would it happen once a month?

A. Maybe once every month and a half, two months. If there was some special order outfit that we would have to get out, then we would come in on Sunday and work.

Q. How many people worked in the sewing room in Saugus, California?

A. I would say about 15, 20 people.

Q. Did they all work the same hours that you did?

A. Pretty much so, yes.

• • •

(p. 6) Q. Then, in August, 1978, you moved from Saugus, California to Dyer or Alma, Arkansas?

A. August of '76.

Q. '76?

A. Yes.

Q. What did you do after you got to Arkansas for the (p. 7) foundation?

A. Well, for the first month or so, I worked as a waitress in the restaurant, because the sewing room hadn't — they didn't have it going. It was — people weren't working in the sewing room at that time.

Q. When you were working as a waitress in the restaurant, do you recall how many hours a day that restaurant was opened?

A. It's open 24 hours a day.

Q. What period of time did you work — I mean what hours of the day did you work there?

A. Well, it fluctuated from about eleven o'clock in the morning until about six o'clock in the evening, and then they went on a schedule where they had everybody was working eight-hour shifts, because there was something going on with the labor department. Tony and Sue wanted

to make sure that everybody was only working eight hour shifts, and so we all went on a schedule where we were working three or four days a week on an eight-hour shift.

Q. Were you instructed to move from Saugus, California to Arkansas?

A. Yes, we were.

Q. Who instructed you to make the move?

A. Well, Tony and Sue had called the office and there was some other people that went out with us at the same time, and we were instructed to get all of our things together, because we were going to leave the next day for Alma or Dyer.

Q. When you got to Alma or Dyer, Arkansas, were you instructed to go to work in the Alamo Restaurant there?

(p. 8) A. Yes, I was.

Q. Who instructed you to do that?

A. I believe Susie had told Kathy Wylie at that time that myself and the other girls that had come out with us were to work in the restaurant.

Q. When you worked on eleven a.m. to six p.m. schedule on an eight-hour schedule, who instructed you to do that?

A. Well, at that time Kathy Wylie was kind of like right under Susie, and all that kind of information, it would come about working in the restaurant or the businesses. It mostly came—well, it came directly from Susie, I would say.

Q. How long did you work the eleven a.m. to six p.m. shift in the restaurant?

A. I would say I worked that shift for about two weeks and then it moved to the afternoon shift to where I would come in at about three o'clock in the afternoon and work until eleven at night. And that went on for about I would say, a couple of months. And ther they moved the shifts around again. They alternated them.

Q. Were any records kept of the hours that you worked in the restaurant to your knowledge?

A. No, not to my knowledge.

Q. Were you paid wages when you worked in the restaurant?

A. No, I wasn't paid any wages. I would say about six months before we left in 1978, was when we started getting $5 a week. I think it was about that time.

Q. How was that paid? Was it paid in cash or check?

(p. 9) A. It was paid in cash.

Q. How long did you work in the restaurant in Alma, Arkansas?

A. I worked off and on for about two years.

Q. How many people worked with you on that first two-week period when you were working eleven a.m. to six p.m.?

A. There was — let's see, I would say there was about eight or nine of us.

Q. How many days a week was that?

A. That was six days a week and then on Sundays we would work half day.

Q. Sorry, I didn't hear you on Sundays you would do what?

A. On Sunday we would generally work half a day. We would split up the shift so people could go to the service on Sunday afternoon.

Q. After you switched to an eight-hour shift and were working the three to eleven shift, how many other people were working with you?

A. There was — I believe there was four or five people on each shift.

Q. And how many days a week did you work then?

A. I worked three days a — wait a minute. It was three days a week and one shift on Sunday. Part of a shift. They would, you know, split them up so people could go to service.

Q. What would you do the other three days a week?

A. Well, I always worked in the sewing room, even on (p. 10) the days that I worked as a waitress. The days that I didn't work as a waitress, I worked full time in the sewing room. And then on days that I did waitress, the first part of the day before I had to go to the restaurant. I would — I would work in the sewing room.

Q. How many others were working in the sewing room with you?

A. Oh, let me think. I would say there was somewhere between 12 and 15 people.

Q. What time did the people start working in the sewing room?

A. About ten o'clock in the morning.

Q. How late did they work in the evening?

A. Well, generally it was just until about six o'clock, because most of the girls would go to the prayer meeting in the evening, but there were several occasions when certain people would have to stay behind and stay until like maybe twelve o'clock or one o'clock in the morning and finish a special order. Or on occasion we had to stay up all night to finish something that we were making for Susie. Something that she wanted, like the next day. So we had to stay up and make sure that it got finished.

Q. How frequently would the people in the sewing room have to work all night long, all through the night?

A. I would say that it happened maybe once every two months.

Q. How frequently would they have to work, say as late as twelve midnight?

(p. 11) A. Maybe once a month or once every two months, it varied.

Q. How many days a week did the people work in the sewing room?

A. Six days a week, and sometimes on Sunday if there was something that just had to be put out and done by Monday. We — some people would come in and sew on Sundays.

Q. How often would people have to work in the sewing room on Sundays?

A. Maybe once every three or four months.

Q. Were any records kept of the hours that you worked in the sewing room?

A. No, there were none.

Q. Were any wages paid to the workers in the sewing room?

A. No. They got the general $5 a week like everybody else, but they had no — they didn't get paid any more for their work or anything like that.

Q. Did you work in any other businesses of the foundation in Dyer or Alma, Arkansas other than the sewing room and the restaurant?

A. No, I didn't.

Mr. Fitz: All right, I don't believe I have — no, wait a minute. I do have a couple of questions for you.

Q. Have you ever heard the term, "overseer," used in connection with the foundation?

A. Oh, yes.

Q. What does this term, overseer, mean to you?

(p. 12) A. Well, an overseer, like John had said in the beginning, was a person which they were very few of, who were very close to Tony and Sue, who made sure that everything ran right. And that everybody was doing what they should be doing and, you know. That kind of thing. And there were very few overseers, and as time went on, the overseers, they kind of did away with them.

They made everybody an overseer, so not just — there was just a few, but there was still the few people that were right below Tony and Sue that had some kind of power or say in what the people in the foundation were doing. You know, they would report right to Tony and Sue. They were kind of like almost like spies for Tony and Sue. To make sure that the congregation was doing what they were supposed to be doing.

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Cross-Examination

By Mr. Gean

(p. 13) Q. Were the older brothers and sisters the same as overseers?

A. Yeah, kind of.

Q. Were they considered spies for Tony and Susan?

A. Well, people in the foundation wouldn't consider themselves as spies. They were people that were looking out for your soul to make sure that you were, you know, doing your job the right way. Or, you know, kind of like watching out for you. That's the way it was in the beginning. Later on just before we left, people that were like older brothers and sisters were in charge of running the different businesses. Making sure that Tony and Sue knew what was going on in the businesses. They took care of financial transactions, that kind of thing.

• • •

(p. 14) Q. When did you first become aware of this lawsuit filed by the Secretary of Labor against the Tony and Susan Alamo Foundation?

A. Well, we had received some questionaires from the Department of Labor. I believe that was earlier this year, if I remember right, or the last part. Some time within the last year, I can't remember exactly when that was.

Q. Prior to your receipt of this questionaire from the Secretary of Labor, had you contacted the Department of Labor or government agency or any other government agency concerning the matters that we are discussing here today?

A. I personally didn't, no.

Q. Had you contacted anybody about these matters hoping for some type of relief?

A. No. I personally haven't done any of that.

• • •

(p. 17) A. When you had time you read the Bible, yes. After a while it got to the point to where I didn't do that much Bible reading, because you get tired working all the time, and it was hard to sit down and actually read, because a lot of times you would be so tired that you would actually fall asleep. So you didn't get that much Bible reading in.

Q. Were you encouraged to read the Bible?

A. Well, yeah, they like you to. They talked about it, but for the most part myself and a lot of the other people that I knew, you didn't really have that much time to read the Bible, because like I say you were always working or you were always doing something.

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(p. 19) Q. Can you relate to me any other medical treatments that your children received while you and your husband were associated with the foundation?

A. Let's see, yes. Our first son, Ralph, when we were still living in Los Angeles had gotten one series of what was — of vaccinations, you know, DPT and polio, but that came to a stop, because they were — it got stopped for some reason, you were supposed to have tuberculosis tests during some part of the series that they give little children. And Susie didn't want them to get tuberculosis tests, because she was afraid that maybe somebody's test would come out positive and there would be a big scandal about the foundation. So, they stopped doing it completely. That was not paid by the foundation, it was done at a public clinic in Van Nuys.

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

BEFORE:
HONORABLE WILLIAM R. OVERTON
UNITED STATES DISTRICT JUDGE

NO. 77-2183

RAYMOND J. DONOVAN
SECRETARY OF LABOR
UNITED STATES DEPARTMENT OF LABOR
Plaintiff

V.

TONY AND SUSAN ALAMO FOUNDATION,
TONY ALAMO, SUSAN ALAMO, AND
LARRY LAROUCHE
Defendants

TELEPHONE DEPOSITION OF
LANE LOUISE PETRI
Tucson, Arizona

April 14, 1981

REPORTED BY LINDA K. CENERINO
(Reporter/Notary)

APPEARANCES

For the Plaintiff:

Robert Fitz, Esquire
Office of the Solicitor
555 Griffin Square Building
Dallas, Texas 75202

For the Defendants:

Roy Gean III, Esquire
Gean, Gean & Gean
500 First America Building
Fort Smith, Arkansas 72901

Lane Louise Petri, having been first duly sworn to state the truth, the whole truth and nothing but the truth, testified on her oath as follows:

Direct Examination

By Mr. Fitz

• • •

(p. 8) Q. What were you doing for the Foundation during the last three months you were with it?

A. Okay. The last three months that I was with the Foundation I was what is termed a refugee. And this meant that I was living in the Foundation with an overseer and was being constantly watched so that my parents could not come and take me out. So I was not out in the community at all. I was — stayed mostly at the apartments and occasionally went up to (p. 9) their church.

And my job at that time was doing office work. And also, I was one of four sisters who compiled a master index of resumes which was filled out — a resume was filled out by almost all of the followers in the Foundation at that time. The resumes listed all the job experiences that each of the followers did before they came to the Foundation.

And on the resume they listed their job title, then they named — the length of their experience, and then they had their name on it and also the type of experience. For example, if the job title was Cook, they classified it as Restaurant Cook or Short-Order Cook. And then they rated themselves, if they thought they were excellent, good, fair, or poor at the job. And at the time it was explained to me that this was made to help Tony and Sue place brothers and sisters in Foundation jobs.

Q. You mentioned an overseer figure. Who was this overseer? Do you recall?

A. The overseer that watched me?

Q. Yes.

A. Vickie Larison. She watched me just before I was taken out. I was watched by numerous overseers before that.

Q. Did the overseers do anything other than just watch the brothers or sisters of the Foundation they thought might be taken out?

(p. 10) A. Yes. Overseers had specific job capacities in the Foundation. It was grouped according to brothers, and then sisters had other duties. Brother overseers in general were Foundation phone answerers. Members just couldn't pick up and answer a phone if it rang. There was also an overseer assigned to each living quarter, either a dorm or a house, and then, overseers where we're called baby Christian watchers. They were assigned to new members of the Foundation. And that was a 24-hour job. And they would indoctrinate the people in during their first three months in the Foundation. And then, there were also

older Christian watchers that people that had been members more than three months in the Foundation, the overseers could discipline them and make sure they did their jobs and all and would interact with them. And those were general duties.

And then, specific duties, if a brother overseer was assigned to a kitchen, he was called kitchen overseer, and he was a crew leader of brother workers. And there was also — a kitchen worker could be a dispatcher. And this would organize the food that was sent to the different Foundations. A kitchen overseer would direct all the kitchen operations. And that was basically a 24-hour job responsibility. And they would work in the produce area to organize the produce that came in and dispatch it. And they also worked as cooks and they were assigned by Tony and Sue. And (p. 11) there also were work crew cooks, like if a group, a busload of brothers and sisters, went to Bakersfield, a kitchen overseer was assigned to that duty. Then there was also a donation overseer. And this is when people would donate either clothing articles or any other type of donation to the Foundation that would be distributed to the members, the brothers or sisters would sort and distribute this. Then there were guest overseers. And the brothers would contact the men, and they were called guest talkers. And then, there were guest vehicle drivers and riders. And they were also the guest overseer and the talkers. Then there were witnessing overseers, and they would schedule crews to go down to Los Angeles or Santa Monica to pass out the Foundation literature on the street and to invite people to come. And they would also organize what was called a pair-off or what brother — or group of two brothers would go together on the streets to do the literature distribution. And then, there was office overseer. And this was also a 24-hour assignment job that the brothers would work with the finance and banking of the Foundation. They would answer the phone up there and carry on correspondence with Tony and Sue if they weren't in Saugus. And this would be over the phone. They did bookkeeping, also, and kept records of receipts and check stubs and — for tax purposes.

Q. Of the approximate 300 brothers and sisters (p. 12) associated with the Foundation, how many of them were overseers?

A. Okay. In the last three months more and more brothers and sisters were being appointed overseers because of the expansion in jobs and more — they needed to take on more responsibilities. I don't have the number with me, however, on the name list I starred as many of the people as I was absolutely sure were overseers in the last three months I was there.

Q. Okay. Is that the document you've marked as Petri Exhibit 1?

A. Exhibit 1, yes.

Q. Okay.

A. Okay. Then I'll continue on overseer duties. Then, after the office overseer, there was mail overseer. And this was brothers or sisters that the Church or Tony and Sue said would get the mail that would come in to the congregation and they would pass them out at daily mail call. And they would also handle packages that came in or out of the Foundation. And then, there was a church overseer, which was another 24-hour job, where they would be at the church for 24 hours in Saugus and they would answer the phone there, take outside and inside calls and

calls from Tony and Sue. There were also guest overseers that at non-service times if people came to the Foundation they would greet and talk with them. (p. 13) They handled donation receipts. They handled litigation papers or entry cards that — when people would move into the Foundation, they would sign these as release of responsibility and a record that they came. They also made up prayer lists and they arranged transportation of the Foundation. They did what was called the service line-up. They would organize the Sunday and evening services at the Foundation as to who would be the singer or who would give their testimonies. And they would also run the recording and the speaker system of the church. And they would play tapes or reading Bible over the tape recorder or play music. That's pretty much the brother overseers. And some brothers would be assigned to more than one overseer duty, like a church — the church overseer could also be the donation overseer.

Okay. And then, the sisters there, they also had basic — every sister overseer could answer a phone at the Foundations or where they lived, and there was an overseer at each house or apartment. And they again were baby Christian watchers and older Christian watchers. And those were 24-hour jobs. Then, they also worked in the kitchen, and they were sister crew leaders. They led the women who did the work. And they — one of the sisters was a food dispatcher and another would work in the produce area as an overseer. And then, one was a kitchen overseer cook. And also, some were cooks at the Foundations other than the church. And then, (p. 14) there were work crew cooks. And again, those sisters were donation overseers for sister — or women's articles that would come into

the Foundation. This would be clothes, cosmetics, et cetera. And again, the sisters were guest overseers for women only. They would talk to people who came to the church and tell them about the organization. And they were guest vehicle riders. They were again called guest talkers to go back down to Los Angeles with the people who visited. They were also witnessing overseers who would lead a pair of sisters on passing out literature on the street. And they were baby Christian trainers and they helped schedule the women's witnessing crews. Also, there were women or sister office overseers who handled mailing. It was a bulk mailing correspondence that the Foundation did. And they also handled typing and filing jobs in the office at Tony and Sue's house. And then, there were also mail overseers to distribute the sisters' mail if they weren't present at mail call. And that's the basic overseer duties that I could remember. Again, with the sisters, there was an overlap of — they might have more than one duty as an overseer.

Q. Alright. You mentioned that four sisters worked on the resumes. Could you please give us their names?

A. Okay. I was one of the four. And the other — I can't recall them all, but one was Jeannie Puckett. And I'm not sure of the other two.

(p. 15) Q. Were you aware of the different businesses that the Tony and Susan Alamo Foundation owned or operated in California when you were there in 1976?

A. Yes.

Q. Would you please tell us what businesses these were?

A. Okay. The public businesses included a laundromat, where — and that was in the town of Saugus. It was in the Saugus area. And that was open during the daylight hours for public use. And then, at night it was attended by — they were called property watchers, or brothers that would stay there overnight to watch — to watch the place as kind of like security.

And then, also, at night it was used by the Foundation sisters who would do laundry for different Foundations. They would collect it all and go there and wash and sort. And then, there was the — just one moment.

Okay. There was — just before I left, they opened Alamo Construction Company. The office was a brother's apartment, and he had just become a licensed contractor and set up the company. His card gave his home address as the company address. And instead of calling his home an apartment, the card called it a suite. And all of his business dealings were not done in his home, but over the phone, which was in the kitchen at the apartment complex. There was a pay phone. (p. 16) Or else, he would do the dealings in person. The house officer at Tony and Sue's home in Saugus typed his letters and records. And I typed several of his business letters, so that's how I knew that this was going on.

Q. Do you recall the name of the person that was doing business as Alamo Construction in Saugus, California?

A. Yes, his name was Pat Jones.

Q. I'm sorry. I didn't hear the last name.

A. Jones, J-o-n-e-s.

Q. Were there any other businesses in California?

A. Yes. One moment.

Okay. There was Susan's Interiors, and that was down, I believe, on Hollywood and Vine in Hollywood. And then, there was an electronic repair shop. And that was also down in Hollywood. There was an Alamo on Vine that was a clothing store, but that was closed before the dates that you are asking about. And then, there were the Arkansas businesses, the — well, the Alamo of Nashville in Tennessee, and then the restaurant, The Alamo.

Q. Do you know whether or not there was a sewing room in California?

A. Yes, there was. That was — it was called Foundation Property Number 9. And the sewing room and nursery, child care nursery, were housed in the same building. And the sewing room was a very, very active place when I was there. (p. 17) Sisters would sew starting usually after services or prayer meetings in the morning, 10:00 o'clock or so, and they would sew all afternoon and evening and late into the night and sometimes into the early morning hours. And this would be sewing clothes to send to Arkansas to their Nashville clothing store. And I know, too, that there were jobs in the Foundation for brothers and sisters, and they were called purchasers, and they would go down to Los Angeles and buy goods like at warehouses and things for the sewing room to get those at discount and buy them in bulk. And that's where they got their sewing machines and all, and would bring those back to Saugus. And I don't know if they shipped them because they had trucking between Saugus and Arkansas because I believe they also opened a sewing room in Arkansas.

Q. Do you know if there was an Exxon service station owned and operated by the Foundation in Saugus when you were there in '76?

A. I believe it had been closed at that time. I could be wrong. There was one operating when I was in the Foundation, but I believe in '76 it was closed.

Q. When you were with the Foundation in Saugus, California in 1976, did any of the brothers and sisters work in agricultural type businesses, for instance, in fields or nurseries or —

A. The sisters did not, and I cannot remember if (p. 18) busloads of brothers went up in '76. I know prior to that both brothers and sisters did work up in Bakersfield in the Wasco area.

Q. Do you know how many of the sisters worked in the sewing room when you were there in '76?

A. Okay. One moment.

I can't give a definite number; however, I would say the majority of the sisters that — I would say over half of the sisters were sewers. That was the largest weight — you know, the most amount of sisters were employed in the Foundation as sewers.

• • •

(p. 19) Q. When you were working during the last three months you were with the Foundation in 1976 preparing resumes, how many hours a day were you working?

A. I would say—what I did with the resumes was make a master list, so I was going over every resume that was turned in and classifying it, catergorizing, like com-

piling all the people that had worked as a cook or all the people who had worked as plumbers, and then subclassifying them. And, you know, I can't remember the exact hours of the day, but I would put in at least eight hours, if not more, because—

Q. How many days a week was that?

A. I would say five to six days.

Q. Do you know if any records were kept of your hours of work?

A. No, no records at all.

Q. Do you know if any records were kept of the hours of work of the other brothers and sisters that were doing Foundation work?

A. No. We punched no time clocks. There was, you know, no job contract that—you know, and, no, we just worked until the job was done. And that might be—it was (p. 20) usually more than eight hours. Tony and Sue had told the public and told us to tell the public that we would get at least six to eight hours sleep a night, but I seem to remember that that lasted for a short while. And then, those last three months I was in, people were getting less and less sleep because they were working, you know, the day and into the late—into the night because the jobs were expanding so fast and people were moving around, filling in jobs and—

Q. Were you paid any wages during the last three months you were with the Foundation?

A. No, no wages.

Q. To your knowledge, were any other members of the Foundation paid any wages?

A. Not to my knowledge, no.

Q. You described some of the brothers that were working in the Foundation construction jobs and some of the sisters that were working in the Foundation sewing room. And then, you've also described the people from the Foundation that were witnessing on the street.

A. Right.

Q. Can you give me any sort of breakdown as to how many people with the Foundation, brothers and sisters, were working in the different businesses of the Foundation as opposed to how many were witnessing on the street for the Foundation?

(p. 21) A. Okay. Okay. The original emphasis of the Foundation when it started was the witnessing. However, as time went on and the Foundation grew and there were more and more businesses, there was less and less witnessing and there was, to my knowledge, absolutely none in California in the last three months when I was there, none organized. You know, maybe it was casual in talking to people. But I also know that—that we were called—well, that the main aspects of the Christian Foundation life were Bible, prayer, fasting, witnessing, and work. And I would say the major portion of those different aspects was work. At first, you know, before '75, it was—way back in the early '70's it was witnessing but it became more and more work as time went on.

And another thing, too, is that I was led to believe when I was in there that we were shareholders in their non-profit California corporation and that if we signed all of our checks and cash over to the Foundation—and that would include any property, like our cars, furniture,

our personal goods, and plus all of our time and our work and our efforts—that, you know, we were supporting the work of God and supporting the Church work. But, in reality, you know, when I got out I realized that the only share we had was to work for and to maintain and to live in Tony's and Sue's properties and businesses. And so, that—you know, they were making quite a profit off of us and we were getting no salary, benefits, or (p. 22) rights.

And then, another thing, too, that when I left I lost, you know, anything they had promised in the Foundation, whether that would be as a shareholder and even, according to them, I, you know, lost my faith or my salvation. And I don't agree with that, but that's what they—that's what they would say. And it was a real rip-off.

Another thing, too, is that the Christian part of the title I noticed in 1975 was dropped in many of the business dealings. Instead of calling it the Tony and Susan Alamo Christian Foundation, they would call it the Alamo Foundation. It was just getting less and less emphasis, anyway, in the business dealings with the Christian aspect of the group.

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Cross-Examination

By Mr. Gean

(p. 24) Q. Have you made any efforts prior to your contact with the Secretary of Labor to collect what wages you allege are due you?

A. No.

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(p. 25) Q. Why did you decide to become associated with the Foundation?

A. I had read their literature, that one tract I received. And then, I had called them to visit their services. I went up and was approched by their members and was invited to join the group by the members and very strongly encouraged to do so. It was more or less spiritually a life-or-death matter to join them.

Q. I'm sorry. Would you mind repeating that again about your life sentence, please?

A. Okay. I was fairly strongly encouraged to join (p. 26) their group, and it was—well, I was—we were—from the very start I could say that I was instilled with fear and guilt that if I didn't join them I was—would like lose salvation or not be serving God a hundred percent. They just had a lot of eliches. And at that time I was wanting to serve, you know, to serve God. And so, I decided to join their group.

Q. Are you affiliated with any religious foundation now, Miss Petri?

A. No, I am not. However, my basic Christian beliefs are intact and I—if anything, my faith is stronger. See, like when you leave the group, they say that you lose your salvation and that you're a backslider and that you're a traitor or a Judas and that—

Q. Do you have the names of the individuals that told you that?

A. Well, I can't give specific names. However, my entire stay there, it was said over and over to all the members, and Tony and Sue would say it to the members,

that people that would leave were traitors and that members would say among themselves that if you left something bad physically would happen to you such as an injury or a death, and definitely spiritually you would probably burn in hell. And so, they held us with very strong psychological holds, and that was physically restraining, too. So I could not have left the (p. 27) Foundation on my own. I was afraid to.

Q. Well, again, explain how you did leave the Foundation.

A. I was rescued by my parents through a conservatorship. And they came in with legal papers to take me out to allow me time to evaluate what I was into because I couldn't think for myself in the group.

Q. Was the conservatorship a court proceeding?

A. Yes, it—for my parents it was a court proceeding and for myself.

Q. Out of which county?

A. Los Angeles.

Q. Where the conservatorship was filed or proceedings—

A. It was the County of Los Angeles.

Q. Are you under a physician's care at this time?

A. No. When I came out I went through a deprogramming process, and it wasn't anything like they told us in the Foundation. They made us very fearful of deprogramming in the Foundation and they told us that deprogramming was to take our faith away and that it would

physically harm us and spiritually destroy us. And that didn't happen at all.

Q. Could you tell me the names of the people who said that, please?

A. It was said—okay. Specific names I can't say. (p. 28) However, it was implied in the literature that Tony and Sue sent out in their bulk mailings and it was a general Foundation belief within the Foundation. However, they probably would deny it if you questioned them specifically.

• • •

(p. 29) Q. How often were you required to attend church?

A. Okay. The church services were usually nightly and also twice on Sundays in the afternoon and evening, and they lasted for about an hour.

Q. So how many hours a week would you spend in church?

A. In church services?

Q. Uh-huh.

A. Most likely, eight hours.

Q. Eight hours a week?

A. Uh-huh.

(p. 30) Q. Were you also required to read the Bible?

A. Yes.

Q. And did you have a number of hours that you were required to do that?

A. At least an hour a day.

Q. So, in other words, seven hours a week?

A. Yes.

• • •

(p. 32) Q. Other than working in the sewing room and compiling resumes, did you have any other duties with the Foundation?

A. Well, again, the last three months I was there I was under—I was called a refugee and where I could work in the Foundation was limited. I was pretty much kept isolated, out of sight. So I spent most of my time at the apartments doing the resumes. Another place I had worked was up in the kitchen at the church.

Q. Do you remember who you worked with in the kitchen area?

A. Again, it was with the overseer.

Q. And that being Vickie Larison?

A. Right. In the kitchen I had also worked with—well, again, I can't specifically recall names. I was working around a lot of other brothers and sisters.

Q. Okay. Are you acquainted with a Mr. Richard T. Heydell?

A. Yes.

Q. Did you work with him at the Foundation?

A. I had—I had worked in the office at Tony and Sue's house. He would come in and out of that office.

• • •

(p. 38) Q. Did your parents ever come and visit you while you were associated with the Foundation?

A. Yes, they did.

Q And do you remember the specific date, or if you don't remember the specific date, an approximate date of their visit?

A. Well, they came at Christmastime 1974. And that was—

Q. That was the only time they came and visited you?

A. No, they had visited me before that. And that was the last time that I saw them because Susan was afraid they were going to take me out.

• • •

Redirect Examination

By Mr. Fitz

(p. 40) Q. Miss Petri, you mentioned mandatory church services nightly. Was that in 1976?

A. What I remember is that everyone got so busy with Arkansas that they cut back on the church services. And also, I could go to very few church services unless I stayed back in the kitchen because I was being watched carefully.

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION
BEFORE:

HONORABLE WILLIAM R. OVERTON
UNITED STATES DISTRICT JUDGE

NO. 77-2183

RAYMOND J. DONOVAN
SECRETARY OF LABOR
UNITED STATES DEPARTMENT OF LABOR
Plaintiff

VS.

TONY AND SUSAN ALAMO FOUNDATION,
TONY ALAMO, SUSAN ALAMO, AND
LARRY LAROUCHE
Defendants

TELEPHONE DEPOSITION OF LUCIEN C. CLAUDE
Sacramento, California

May 11, 1981

REPORTED BY JOANIE P. YAMASHITA, CSR 5199

APPEARANCES

For the Plaintiff

Robert Fitz, Esquire
Office of the Solicitor
555 Griffin Square Building
Dallas, Texas 75202

For the Defendants:

Gean, Gean & Gean
(Not Appearing)
500 First America Building
Fort Smith, Arkansas 72901

Direct Examination

By Mr. Fitz

• • •

(p. 10) Q. Were you paid anything at all for the work you did for the foundation?

A. Well, the work I did on the outside, you know, we used to call "work inner city".

If I was in charge of a job, I would get the checks and I would turn over the checks to the foundation. That's the only condition we could work anyway.

If I did work with some other crews, you know, I would not know or I would not see — I had nothing to do with the (p. 11) money that would come in. But it will go to the foundation and they kept track everyday on the money coming in.

Q. How would the check be made out when you received it and turned it over the foundation?

Would it be made to you personally or would it be made to the Tony and Susan Alamo Foundation?

A. Well, a lot of them were made out to me, if I was in charge of the job. Sometimes they were made out to the foundation.

Q. Would you — when you were in charge of your various crews, would you sign a contract to do the work or was it an oral condition of the materials and condition of the work?

A. It would be both cases. I have done just oral. I have done on making up some contracts. And when I work for some — did work for some other people of the foundation, I don't know all the time how they used to do it.

Q. When you signed contracts to do work for the foundation, would you — would the contract be between you, Mr. Claude, and the person you were contracting or would it be between the foundation and the persons that were contracting?

A. Generally, between me and the person. But this is the way that the foundation will work. Mr. Alamo didn't want no direct involvement with himself just in case there was trouble with whoever.

You know, if he tells us to pull off a job, we'll pull off immediately leaving everything as it is. And it would never be a problem for him.

(p. 12) Q. Did you use your own name or did you have a business name?

A. Well, my business name or the nickname is "Lou Claude" just to make it simpler on the spelling.

Q. I guess I really didn't make my question clear.

Did you use your name as Lou Claude Contractor or were you using a business name or trade name like

Claude Construction or Lou's Construction or something like that?

A. No, no. It would just be Lou Claude.

Q. When you received the checks for the work, would the checks for the work be given to you each day or when the job was completed?

A. Most case, we will get — this is instructions from Mr. Alamo. We will get deposit for materials, sometimes like half the total cost and completion. We'd get the final payment and then we turn the checks over to the foundation even for deposit for material; and then, we will put on the finance list — what Mr. Alamo called a finance list. It's a list of money that anybody needs going from material for a job all the way to a toothbrush for a baby, that will be put on that finance list.

And every night, the head of the office will get in touch with Mr. Alamo directly or sometimes give to another person that was with Mr. Alamo, and that finance list will end up going to Mr. Alamo. He will okay whichever expense that he felt was right or whatever; and then, the finance list will come back over the telephone; and, by the morning, we knew if the money we put on the finance list was okay to (p. 13) get. Then we will go to the office and get the money that we needed to spend.

Q. To your knowledge, were any of the people that worked on the crews you were in charge of, were they ever paid anything?

A. No, no.

Q. How many hours a day would they work on the job?

A. Well, I'd say about eight hours, seven to eight hours.

Q. How many days a week?

A. Six to seven.

Q. When you were in the foundation in California from January 1st, 1976 until the time you left it, how did the people that were associated with the foundation refer to themselves?

A. As foundation members.

We all understood that the foundation became rich and so that we were all rich. We were all part of the foundation.

It came to my understanding just before I left — a little bit before I left the foundation — that legally, we were — we didn't have no rights whatsoever belonging to the foundation and that the real owners legally were only Tony and Susan Alamo.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

BEFORE:
HONORABLE WILLIAM R. OVERTON
UNITED STATES DISTRICT JUDGE

NO. 77-2183

RAYMOND J. DONOVAN
SECRETARY OF LABOR
UNITED STATES DEPARTMENT OF LABOR
Plaintiff

V.

TONY AND SUSAN ALAMO FOUNDATION,
TONY ALAMO, SUSAN ALAMO, AND
LARRY LAROUCHE
Defendants

TELEPHONE DEPOSITION OF
WILLIAM J. BAXTER a/k/a BILLY BAXTER
New York, New York

May 12, 1981

REPORTED BY S & S REPORTING CO., INC.

APPEARANCES

For the Plaintiff:
(In Texas)

Robert Fitz, Esquire
Office of the Solicitor
555 Griffin Square Building
Dallas, Texas 75202

For the Defendants:
(In Arkansas)

Roy Gean III, Esquire
Gean, Gean & Gean
500 First America Building
Fort Smith, Arkansas 72901

Direct Examination

By Mr. Fitz

• • •

(p. 16) Q. At the service station what was your job?

A. I pumped gas. I fixed truck tires. I fixed flats on cars. I did oil changes, not too regularly, though. I didn't like that too much, and I also did the books.

Q. Was any record made of your hours of work at the station?

A. I would think that the only hours that would be recorded would be, you know, the changing of a shift or something. I would sign my name or something to the log sheet of the day's business and how much we sold or, you know, how much we made that day and how it balanced out.

Q. Do you know what the daily sales were running when you were working at the DX station?

A. Not really. It wasn't a tremendous figure at all.

I would say a thousand dollars and for a gas station that is not much, but we did a lot of truck tires though, so that was a lot of our business, which was in the labor related things, not just in selling gas as a gas station. It didn't pump that much (p. 17) gas, because the prices were not as low as other stations in that area.

Q. How many hours were you working each day that you worked there?

A. It would all depend on if other people would work and I would say approximately, on an average basis probably around 12 hours a day.

Q. Did you have any regular time that you were expected to be there?

A. Yes.

Q. What was that?

A. At one point I was on a morning shift, so I guess it would be like 6:00 or 7:00 o'clock in the morning and at another time I would do a night shift or maybe I might come in at 4:00 o'clock in the afternoon and, you know, stay until midnight or afterwards.

Q. When you came in on the morning shift, how late were you expected to stay?

A. Usually until 6:00 o'clock or something like that, so I could, you know, be available to go to services that night.

Q. Were the other five employees that helped at the station keeping essentially the same (p. 18) hours or were they keeping different hours?

A. It would all depend on what other functions they had within the Foundation.

You know, somebody might have other duties, other than what his basic job was assigned, just like I did.

Q. Would it be fair to say that five employees on the average were at the station at any one time, during any one 24 hour day?

A. I would not know that five would be a correct number at any given point. There were slow parts during the day that only required two people.

Q. How frequently, or how much time would only two people be at the station?

A. It all depended on if other people would come in and pull their weight.

Q. Can you give me any idea, on the average, whether it would be two hours a day or six hours a day?

A. I would say an average three or four hours, maybe.

Q. Were any wages paid to any of the workers at the station?

A. No, they were not.

(p. 19) Q. Did you receive any wages when you worked at the DX station?

A. No, I did not.

Q. How long did you work at the DX station?

A. From October of 1975 to March of 1976.

Q. What did you do starting in March 1976?

A. It was requested by a brother, that I knew in Nashville, that I work at the clothing store that we had

recently opened in Arkansas called the Alamo of Nashville in Alma, and I worked there as a salesman again.

Q. Let me back up just a moment.

The DX service station, was anybody in charge of that service station?

A. I would say all of us were pretty much in charge of making sure that the place ran properly.

Q. If there were any questions, who would the workers at the service station look to to answer their question?

A. Concerning what?

Q. Well, concerning credits or concerning whether or not to order another consignment of gasoline?

A. Well, it would go on a list they would be given that night and read off, and Tony Alamo would (p. 20) okay or not okay certain financial things or personal needs that we had at the station.

Q. Going back to the Alamo of Nashville Clothing Store in Alma, Arkansas, what did you do there?

A. In Arkansas?

Q. Yes, in 1976 forward.

A. I was a salesman there, and I did the books there, ordered clothes and pretty much ran things for a period of time.

Q. Where were you ordering clothes from?

A. Different companies throughout the United States.

Q. How much of the clothing that was sold at the Alamo of Nashville Clothing Store in Alma, Arkansas was made by the foundation's sewing rooms?

A. I can't give you a percentage, but it was a fairly good amount, but nothing major, nothing like—it is not even 20 per cent, I would think.

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(p. 21) Q. How long did you work at the Alamo of Nashville, in Alma?

A. From March of 1976 to October of 1976.

Q. Did you have any regular scheduled hours of work there?

A. Not really.

Q. Can you tell me what your general hours of work were?

A. Well, the store opened up at 9:00 o'clock in the morning and closed at 12:00 o'clock midnight, (p. 22) so depending on if I went to services at night or could get someone to take my place. Usually a long time, you know.

Q. If you could not get somebody to take your place for services, would you be there from 9:00 a.m. to 12:00 midnight?

A. It would be possible that I could be there that long or go off on some other job, but usually I worked—I put in long hours there.

Q. How many days a week was the store opened?

A. Six.

Q. Would you work there all six days a week when you were working there from March '76 to October '76?

A. It might be possible that I would work there all six days.

Q. Were any records kept of your hours of work at the store?

A. Again, the only hours that would be recorded would be those hours that would appear on documents that dealt with the business of the store for that particular day, so my name would appear on different sheets, or, you know, that I was there that (p. 23) day, because I would do the business at night.

Q. Did you punch a time clock or turn in a timecard showing that you put in nine hours or sixteen hours or anything like that?

A. No.

Q. Were you paid any wages when you worked at the clothing store in Alma?

A. No.

Q. Did anybody else work at the clothing store with you?

A. Yes.

Q. Do you know whether or not they were paid any wages?

A. No, I don't believe so.

Q. Were any records kept of their hours of work?

A. Again that would be the same situation with the daily business, that would appear on a log sheet.

Q. Did they work the same hours that you worked? Would they be there when the store was open from 9:00 a.m. to midnight or would they keep different hours?

A. They might keep different hours than I would. I might have worked longer hours than other (p. 24) people, because some people there had other functions in the Foundation, such as carpenters and masons and electricians and they had to be about that kind of business also, and not just be stationed in one particular place.

Q. How many people were working in the clothing store in Alma, at any one point in time, during the period from October '75 to March '76?

A. I would say three regular people and people that would volunteer.

Q. How many volunteers might you have at any one point in time? Would it be more than two or three or would it be just one?

A. Usually one and sometimes two.

Q. When you say regular people, what do you mean?

A. People that were—that their main job was in the running of the Alamo of Nashville in Alma.

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(p. 25) Q. Did you have to report to anybody when you were working at the clothing store in Alma?

A. Report? Exactly what do you mean by that?

Q. To make a purchase, to fill out a purchase order for clothing coming in, did you have to report to Tony

Alamo or LaRouche or anybody else to determine whether or not that would be acceptable or did you have the ultimate authority to make purchases?

A. No, I did not have the authority to make purchases, however I would submit what I felt was needed by what we were running low on at the time, I would submit that to someone at the office in Dyer, who would inform Tony and Tony would make his judgement as to whether we needed it or not or how much of it we did need.

Q. After you no longer worked in the (p. 26) clothing store in October '76, what did you do?

A. I was transferred to the store in Nashville once again.

Q. Who transferred you?

A. I was requested—it was requested by the brothers in Nashville for me to go back out there and they asked Tony if I could go, that they needed someone, and there was a change in personnel at the time, and Tony—I never talked to Tony directly about it, but these brothers from Nashville, who came in to the store—who came into Arkansas asked Tony and he said okay if he wants to go tell him to go.

Q. How long were you in Nashville the second time when you went, in October '76?

A. From October of '76 to March of '77.

Q. How many other people were in the Nashville store, at the time that you were there?

A. Nine.

Q. What were you doing in the Nashville store?

A. I was a salesman, basically the same functions that I had had over the last year or more, doing the books, generally doing everything that needs to be done within a clothing store.

(p. 27) Q. What hours was the Nashville Clothing Store open when you were there, October '76 to March '77?

A. 9:00 o'clock in the morning until 2:00 o'clock in the morning.

Q. How many days a week was that?

A. Six.

Q. How many hours were you working at the store when you were there?

A. Again, it would all depend on what my functions were for that day. It might be that I might put in eight hours and then go back to where we lived and watch television or whatever.

I don't know. Sometimes I would put in very long days and other days I would not put in as long.

Sometimes I would—we did advertising there and we would go out in the early mornings and drop off our card in different hotels and restaurants, so that it would encourage people to come to our store by picking up the card, so I might do that on any particular day also.

Q. Would an average of ten hours a day, six days a week be a fair average?

(p. 28) A. That would be a fair average.

Q. Were any records kept of your time at work at the Nashville Clothing Store? That is, did you punch a

time clock or turn in a time card showing that you worked ten hours or nine hours or 12 hours?

A. No, I did not.

Q. Were you paid any wages when you worked at the Nashville store?

A. No, I was not.

Q. Do you know whether any of the other workers of the Nashville store turned in any records of their hours of work?

A. No, they did not.

Q. Were they paid any wages?

A. No, they were not.

Q. After March 1977, what did you do?

A. I returned to Arkansas once again, and went to work at another gas station, the Kerr McGee Station.

Q. When did you return to Arkansas?

A. I was transferred.

Q. Who transferred you?

What I am trying to find out is, did Tony Alamo or did somebody else in the Foundation (p. 29) directly order or request you to go from Nashville, Tennessee back to Alma, Arkansas or did you request the transfer and they approved it or did you just do it on your own?

A. No, I did not do it on my own.

Q. Okay.

Can you please tell me how it came to pass that you moved from Nashville, Tennessee to Alma, Arkansas in March 1977?

A. The events and circumstances are not exactly clear in my mind as to what transpired to bring me back out to Arkansas.

It was on the suggestion of another brother who felt that I was not doing a good job in Nashville and his suggestion was forwarded to Tony and Tony believed him more than me.

Q. Tony Alamo essentially had the say that you would come back to Alma; is that correct, or am I incorrect in that?

A. Yes, but when I originally went back out there, he asked me to take over the operation of a new store that we had opened called the Alamo Bandido, and that was my original—that was what he said for me to do. I don't know if it was a—in my (p. 30) mind it was a come down. It was a bring down from working in this very beautiful store in Nashville to come and work in the sticks again, but I went along with it.

Q. Now, you mentioned both the Alamo Bandido and also the Kerr McGee station.

Which one did you first go to work in when you returned to Alma, in March 1977?

A. The Bandido.

Q. How long did you work in the Bandido?

A. About a month and a half.

Q. Can you please tell us what the Bandido is?

A. It was a discount store that was there at that time. I don't know if it is still there. It sold discount shoes and a lot of very inexpensive clothes, so that the people in Arkansas who could not afford to come into the Alamo of Nashville could go there and be able to buy stuff that they could afford.

Q. What hours was the Alamo Bandido open when you worked there?

A. I believe it was 9:00 o'clock until 12:00 o'clock at night. 9:00 o'clock in the morning until 12:00 o'clock at night.

(p. 31) Q. How many people worked in the store with you during the period of time that you worked there?

A. I believe it was three.

Q. All three of the workers were there from 9:00 o'clock in the morning until 12:00 o'clock midnight?

A. No. It is the same general description that I have tried to convey about all of my experiences at work in different Foundation businesses, people coming and going and some working for periods of time and other people taking over if they felt they needed to come in and help out.

Q. Would there on an average be three people in the Alamo Bandido at any one point in time working there between 9:00 a.m. and 12:00 midnight when you were there?

A. Not necessarily. It might just be two people.

Q. Were any—first of all, let me ask you how many days a week this store was opened?

A. Six.

Q. Were any records kept of your hours of work when you were there such as a time clock or did you turn in a time card with your hours on it?

(p. 32) A. No.

Q. Were you paid any wages when you worked there?

A. No.

Q. Do you know if the other people that worked there turned in any record of their hours of work?

A. I do not know of that.

Q. Were they paid any wages?

A. No.

Q. Would it be fair to say that you worked on an average of 10 hours a day six days a week or is that too high or too low?

A. Well, in searching for averages, I guess that average would do.

• • •

(p. 38) Q. How many hours a day was the Kerr McGee Station opened?

A. Twenty-four.

Q. How many days a week?

A. Seven.

Q. Were there regular shifts there?

A. Yes.

Q. What were those shifts?

A. They were usually in, I would say ten hour shifts, including breaks and lunches, that's included in those hours.

Maybe twelve hours and perhaps if the place got busy enough one might find themselves there 15 hours, you know, if there was no one to take his place of it there was no one that was willing to volunteer to take someone's place, it could reach up to those hours at points.

Q. Did you have a regular shift when you worked there?

A. Yes.

Q. What was that shift?

A. Usually the morning shift that I had for (p. 39) a period of time, it would be 7:00 o'clock in the morning until 5:30 or something like that, and other times it would be 4:00 or 5:00 o'clock in the afternoon until 12:00 and then it might be 12:00 o'clock in the morning until 7:00 o'clock in the morning, you know, depending—you know, it was basically run in overlapping shifts, so that there was always enough people.

It's probably one of the busiest gas stations in that State.

Q. When you worked there were any records of the hours that the people worked there kept? That is, did they punch a time clock or turn in timecards?

A. No, but there might have been a sign-in sheet or a sign-out sheet, with times next to it, recording those hours.

I'm not sure if those really would be recording those hours or just when someone got there and left, in order that, if someone wanted to find you, they could call the gas station and say do you know where so-and-so is and they would say wait a minute, let me check the sign-out sheet and they would see that you had left and that your destination was so-and-so, so that you would be able to be contacted, (p. 40) no matter where you were at whatever hour of the day.

Q. Were any wages paid to the workers when you worked at the Kerr McGee Service Station?

A. No.

Q. What did you do after you worked at the Kerr McGee Station?

A. I went to work in a factory in Arkansas.

Q. What factory was this?

A. I worked at Planters Peanut Factory in Fort Smith, and that was unloading boxcars which was a lot harder than anything that I had experienced until that time and then I worked for a furniture factory in Arkansas, Ayers Furniture Factory.

Q. Could you spell Ayers?

A. A-Y-E-R-S.

Q. Were you still a member of the Foundation or associated with the Foundation, at this time?

A. Yes.

Q. How did you come to work at the Planters Peanuts or did you decide that you did not want to work at the Kerr McGee Station any more and just got out and—

A. No. I was transferred—I was not transferred to—I was just transferred out, I guess I (p. 41) was as close as the Foundation can come to being fired.

Q. Who transferred you out?

Would this be Tony Alamo, or at his direction or somebody else's direction?

A. Well, it might be on the recommendation from someone else to Tony Alamo, informing him of my shortcomings or their belief in my shortcomings and acting upon that advice, he would make his decision.

I mean, he did not have a crystal ball. He could not see everybody and exactly what was going on, so he had to rely on other people for information.

Q. How long did you work at Planters Peanuts?

A. I would say I worked there for two months.

Q. When did you start to work at Planters Peanuts and when did you leave?

A. As soon as I could get a better job I split.

Q. Do you remember the month that you went to work at Planters Peanuts? Would that have been in October?

A. It would have been October.

Q. And you worked there for two months, so (p. 42) you would have left December of '77, is that right or am I wrong on that?

A. I would say around that time, yes.

Q. And then when did you go to work for Ayers Furniture?

A. Directly following my termination of my job at Planters Peanuts, they would lay off people down there because there would be too many peanuts coming in and they did not have enough work for the rest of the line, it was an assembly-type of situation, even though I just unloaded peanuts off the box cars, so I think they laid me off for about a week, and within that period of time I realized that I should get something a little bit easier on my body.

Q. Were you drawing a paycheck, at this time?

A. Yes.

Q. What were you doing with your paycheck?

A. I was donating it to the Foundation.

Q. And then you went to work for Ayers Furniture?

A. In December 1977.

Q. How long did you work at Ayers Furniture?

A. I would say until the spring of '78.

(p. 43) Q. Were you drawing a paycheck from Ayers Furniture?

A. Yes, I was.

Q. What were you doing with the paycheck?

A. I was donating it to the Foundation.

Q. What did you do after you left Ayers Furniture?

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Cross-Examination

By Mr. Gean:

(p. 63) Q. Mr. Baxter, when did you first become aware of this lawsuit filed by the Secretary of Labor against the Foundation?

(p. 64) A. I first became aware of it while I was in Arkansas. I read the Arkansas Gazette, that someone from the Foundation had been asked to give a deposition in Little Rock as to the aspect of the businesses and wages and all of that business.

Q. That was the first time that you became aware of it?

A. Yes, that was the first time. I was still in the Foundation.

Q. After your departure from the Foundation, when did you first become connected with the lawsuit?

A. I was told by someone's parent, who is in the Foundation, that a lawsuit was proceeding and that, did I have any information that I could help out with.

Q. Did you contact the Department of Labor or any Government Agency concerning your association with the Foundation?

A. No.

Q. Not about your association with them?

A. My association has been being contacted by Mr. Fitz.

Q. When were you first contacted by Mr. Fitz?

(p. 65) A. I would say a year ago.

Q. Are you stating or making any assertion that the Foundation owes you wages?

A. No, I do not believe that the Foundation owes me anything other than a clean up their act and to realize that the times have changed and that if it be possible to pay wages, that they do that, or they make provision for the people that are in the Foundation that they do have something to fall back on, whether in or out of the Foundation.

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(p. 66) Q. Do you still adhere to the Christian belife, Mr. Baxter?

A. Yes.

Q. While at the Foundation, did you, during your stay there, did you consider yourself at any point during your stay with the Foundation rehabilitated from any problem that you might have?

A. I don't believe rehabilitation is the right word, because it congers up in people's mind that everybody in the Foundation was just a junkie and that's not the way it was. I was not just a junkie I was someone that went to California, many times, that hitchhiked across the country searching for God.

Q. Let me rephrase the question then.

Are you using drugs now?

A. No.

Q. Were you addicted to drugs prior to your departure from New York City, in August of 1972?

A. If I was not addicted I was as close as (p. 67) you could be.

Q. Do you feel like your stay with the Foundation assisted you in—I can't use the word rehabilitation, but —

A. Well, I would say that—yes, it did, to a certain degree, it most definitely did.

Q. While you were working at the DX Station, I believe you stated from October 1975 to March 1976, were you involved in any Bible readings?

A. Yes.

Q. Did you read each day?

A. I would like to admit that I did. I'm not sure if I read every day or—

Q. How many hours a week would you say that you spent in Bible reading?

A. At different points in my tenure at the Foundation it would be different amounts. I would say in the early days, and I'm talking about—

Q. While you were working at the DX.

A. At the DX?

Q. October '75 to March 1976.

A. I read the Bible a lot, I would say two and a half; three hours a day.

Q. Did you also attend church during that (p. 68) time, during your tenure while you were working at the DX between October 1975 to March 1976?

A. Yes.

Q. How many hours a week did you spend in service at the church?

A. Well, that would depend on if I was not working during a shift that a service would be going on at, but usually once a day, either in the morning, if I worked in the afternoon I would go to morning service which might take an hour or two hours, I know it depended on the way I was going, and you know, what we were trying to do in that service or at night it might last longer or sometimes the service might last 15 minutes, but most of the time I would say the services would last approximately an hour.

Q. Let's say on a weekly basis then, during this time of October through March, how many hours did you spend in church or in church related activities?

A. I'll tell you I consider my involvement with the Foundation in the businesses and in the preaching of the gospel to other people that were not part of the Foundation as one package.

Q. While you were working at these various (p. 69) activities that the Foundation conducts, whether it be at the DX or at the clothing store, did you witness to individuals that came to the stores?

A. Yes.

Q. Is that only a periodic basis or was it frequently done or was it always done?

A. I will put it to you like this.

It was done as the Spirit gave us utterance.

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(p. 70) Q. Were your meals provided for you while you were staying at the Foundation?

A. Yes.

Q. Did you eat three meals a day?

(p. 71) I know not every day, but I'm talking on a regular basis?

A. Yes.

Q. During your stay at the Foundation, which covers a span of approximately six years, I believe, did you receive any dental or medical treatment?

A. Yes.

Q. What type of tretatment did you receive and when?

A. At one point I had a lot of dental problems in the Foundation.

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(p. 72) sent to a private dentist, who took care of my teeth.

Another time, later on in Arkansas, later on, within the next year, I was treated by a private dentist, also paid for—

Q. Who took care of the expenses on the latter two dental treatments that you just mentioned?

A. The Foundation.

Q. What type of dental treatment did you receive? Was it just cavities?

A. No, it was oral surgery.

Q. Was it gum related problems?

A. Yes.

Q. Was it a recessed gum problem?

A. Yes.

Q. Was there any grafting of tissue to rebuild the gums around your teeth?

Was that done?

A. No, I don't believe that was done at that time.

Q. Did you have any source of income outside of what the Foundation might have given you while you were associated with the Foundation?

A. At times I might have gotten, not an actual income, but my mother or father at different (p. 73) points, I would say maybe five times in six years might have sent me fifty bucks or 100 bucks at a time, something like that, but nothing that could go that far in this world.

Q. Did the Foundation provide you with clothing while you were there?

A. Yes.

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(p. 76) Q. You stated that you made some donations to the Foundation of your employment checks of Planters Peanuts in Ayers.

Was that the entire paycheck?

A. Yes.

Q. Where were you living at the time that you were working at Planters?

A. I was living in a place that we called the Courts.

Q. That was at the Foundation?

A. Yes.

Q. Were you eating your meals at the Foundation also?

A. Yes.

Q. And that was while you were employed at Planters and while you were employed at Ayers?

A. Yes.

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

BEFORE:
HONORABLE WILLIAM R. OVERTON
UNITED STATES DISTRICT JUDGE

NO. 77-2183

RAYMOND J. DONOVAN
SECRETARY OF LABOR
UNITED STATES DEPARTMENT OF LABOR
Plaintiff

V.

TONY AND SUSAN ALAMO FOUNDATION,
TONY ALAMO, SUSAN ALAMO, AND
LARRY LAROUCHE
Defendants

DEPOSITION OF JUDY SHAPIRO
Fort Smith, Arkansas

August 27, 1982

REPORTED BY CAROLYN TITSWORTH

APPEARANCES

For the Plaintiff:

Robert Fitz, Esquire
Office of the Solicitor
555 Griffin Square Building
Dallas, Texas 75202

For the Defendants:

Roy Gean III, Esquire
Gean, Gean & Gean
500 First America Building
Fort Smith, Arkansas 72901

Judy Shapiro, being first duly sworn upon oath, testified as follows:

Direct Examination

By Mr. Howell:

• • •

(p. 8) Q. Did you ever have to reimburse the Foundation for any of your medical benefits that the Foundation paid for?

A. Not mine, but my husband's.

Q. Could you explain exactly what you mean by that?

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(p. 9) A. One time he was picking up a chicken box at the restaurant on his job, his back gave out and he couldn't move and he went to a chiropractor. The bill, I think, was $144.00. He couldn't even move for at least two days and I wanted to stay with him, but I didn't. I had to go to my job. Later on, we were told we would have to pay back that money. The $144.00 we were being fined. I couldn't understand because his back just gave out on him. It was an accident that happened to him and we had to pay back $5.00 every week. I can't

remember the length of time. Then it was lifted and we didn't have to pay and we got more money for ourselves.

That's the only time.

Q. Mrs. Shapiro, when you were an associate of the Foundation were you ever provided any type of monetary allowance?

A. Yes.

Q. How much was it?

A. Different amounts at different times. One time it was $20.00 each. $20.00 for me and $20.00 for my husband. It was $40.00 for our house for the week. And at other times it was $10.00 each. Most of the times it was $5.00 each or $10.00 each allowance.

Q. How would you receive the allowance?

A. On Sunday morning we would go wait in line for it at their office — at the Foundation office first in Dyer and then at the Ranch.

(p. 10) Q. Who would give you the money?

A. Different guys. Usually it was the same one or maybe two or three different ones and that was all.

Q. Do you have any idea why the money was provided to you?

A. For toothpaste, shampoo and stuff like that—incidentals—shampoo and toothpaste. If your children like—needed shoes or winter coats you would save your money up and use that.

Q. Did you ever have to reimburse the Foundation for any of the money?

A. No.

Q. Judy, you mentioned earlier in one of your answers about being fined. Could you describe that for us—tell us exactly what that was?

A. You mean give an example? Because we did get fined for something. We got food from the restaurant. It snowed about three years ago—when it snowed really heavily and we got food. We were at our apartment for over a month and my youngest daughter was just about a month old and the other one was about a year and a half. We had to stay in. The roads were too snowy. We had to stay with our children at the apartment. We would get food sent from the restaurant dispatched to the apartment building. We were told afterward that we shouldn't have done that. We should have used our own money to buy food for ourselves and the children.

(p. 11) So we got fined and instead of getting $10.00 a week. My husband was involved in it too, so we got $5.00 a week. As a result of that I lost a lot of weight. I suffered from it.

Q. On what basis were the funds provided—did you pick them up every week?

A. Every week.

Q. Mrs. Shapiro, you mentioned while you were at the Foundation you were provided food. Exactly what do you mean you were provided food?

A. They had a cafeteria and you go there for breakfast. You were there in the morning for breakfast and then you go to your job and then you could have lunch that was provided for you at lunchtime. Then at dinner you

would either eat dinner at your job or at the cafeteria. If your children were sick you stayed at home with your children and no food was provided for you. You had to use your money—your $10.00 a week for food if the children were home sick or you were sick.

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Cross-Examination

By Mr. Gean:

(p. 15) Q. You stated your husband had to reimburse the Foundation for a doctor's bill?

(p. 16) A. Yes.

Q. Where did he receive the money to reimburse the Foundation?

A. From the Foundation.

Q. Could you explain the procedure by which the Foundation took care of your medical bills that resulted from the birth of your children? Did you ever even see the bills?

A. No, because they went—that is, they were taken care of by the Foundation because I didn't have the money to pay for it.

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(p. 16) Q. Were there any complications with any of those births?

A. Well, the first one, my oldest child, her heart beat started to slow down and they said "We are going to do a C-Section" and she was delivered by low forceps. She was almost too big for me to have without help. So she was delivered by low forceps.

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(p. 20) A. Yes. I have just thought of something. There was one complication when I was pregnant with my oldest daughter. I started to have bleeding when I was about six weeks along.

(p. 21) And I was rushed down—it took about two hours, but I was rushed down to White Memorial Emergency Center and I stayed in bed for nine days after that, but I was all right.

Q. Were you admitted to the hospital as an in-patient?

A. No, they just did some tests. So I was off my feet for nine days, but I did not get to go down there right away. I had to wait until I heard from Susan Alamo. I was in Saugus and she was in Arkansas. On that day at the Church on Sunday they were having difficulty with some member's mother who was there causing trouble. So I had to wait about two hours at my house.

Q. Did you ever see that medical bill?

A. No.

Q. The Foundation paid that also?

A. Yes.

(p. 26) Q. Did you ever shop at the grocery store?

A. Yes.

Q. The Alamo Grocery Store?

A. Yes.

(p. 27) Q. Did you pay the grocery store cash?

A. At one point, I think you got a discount. I didn't get up there that much because my husband worked right at the restaurant and he was the one who mainly did the purchasing from the grocery store.

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No. 83-1935

In The

Supreme Court of the United States

October Term, 1983

TONY AND SUSAN ALAMO FOUNDATION, TONY ALAMO, SUSAN ALAMO, AND LARRY LAROUCHE,

Petitioners,

v.

RAYMOND J. DONOVAN, SECRETARY OF LABOR,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITIONERS' BRIEF ON THE MERITS

ROY GEAN, JR.*
ROY GEAN, III
GEAN, GEAN & GEAN
First America Building
Suite 500, 524 Garrison Avenue
Fort Smith, Arkansas 72901-2519
501-783-1124

Attorneys for Petitioners

**Counsel of Record*

COCKLE LAW BRIEF PRINTING CO., (800) 835-7427 Ext. 333

QUESTIONS PRESENTED

1. Is an individual an "employee" as defined by the Fair Labor Standards Act when he renders services to a religious or charitable organization on a voluntary basis with no expectation or desire of compensation or wages in any form as a result of such services?

2. Is an individual an "employee" as defined by the Fair Labor Standards Act because he volunteers his services to a religious or charitable organization if such services are rendered by others who receive compensation for the same services from other organizations?

3. Should the Fair Labor Standards Act and its provisions be applicable to a religious or charitable organization when it uses the services of volunteers?

4. Is the application of the Fair Labor Standards Act to the petitioners violative of the Free Exercise of Religion Clause of the First Amendment to the United States Constitution?

5. Is the application of the Fair Labor Standards Act to the petitioners violative of the Establishment Clause of the First Amendment to the United States Constitution?

6. Is the Secretary of Labor's attempted application of the Act to the petitioners a willful and oppressive denial of that equal protection of the law, which is secured to the petitioners, as to all other persons, by the Constitution of the United States?

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OPINIONS DELIVERED BELOW

The opinion of the United States District Court for the Western District of Arkansas is reported at 567 F. Supp. 556 (1982) and is printed in its entirety in Appendix A at page App. 1-40 of the Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit, herein docketed on May 25, 1984, as Case No. 83-1935. The opinion of the United States Court of Appeals for the Eighth Circuit is reported at 722 F. 2d 397 (1983) and is printed in its entirety in the aforesaid Appendix A at pages App. 48-63.

JURISDICTION

The judgment of the United States Court of Appeals for the Eighth Circuit (See Appendix A of Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit, App. 47 herein filed) was entered on December 5, 1983. Both parties to this action filed timely petitions for rehearing which were denied by Order of the United States Court of Appeals for the Eighth Circuit on March 1, 1984. The Petition for Writ of Certiorari was filed herein on May 25, 1984, and was granted on October 15, 1984. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitutional Provisions

U. S. Const. Amend. I. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech,

or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U. S. Const. Amend. V. No persons shall be . . . deprived of life, liberty, or property, without due process of law. . . .

Statutes

28 U. S. C. § 1291
29 U. S. C. § 201
29 U. S. C. § 203(e)(1)
29 U. S. C. § 203(g)
29 U. S. C. § 203(m)
29 U. S. C. § 203(r)
29 U. S. C. § 203(s)(1), (3), (4), (5), and (6)
29 U. S. C. § 206(a)(1)
29 U. S. C. § 206(b)
29 U. S. C. § 207(a)(1)
29 U. S. C. § 211
29 U. S. C. § 215(a)(2) and (4)
29 U. S. C. § 215(b)
29 U. S. C. § 217
Internal Revenue Code § 501(a) and (c)(3)

Regulations

29 CFR § 516.27
29 CFR § 516.7(b)
29 CFR § 516.8
29 CFR § 531.3
29 CFR § 531.29
29 CFR § 531.30
29 CFR § 531.31
29 CFR § 531.32(a)
29 CFR § 531.33
29 CFR § 541.118(a)
29 CFR § 779.212
29 CFR § 779.213
29 CFR § 779.214

Miscellaneous

Senate Report No. 145, 87th Cong. 1st Sess. (1961) reprinted in 1961 U. S. Code Cong. & Admin. News, 1620, 1660.

Senate Report No. 1487, 89th Cong. 2d. Sess. (1966) reprinted in 1966 U. S. Code Cong. & Admin. News, 3027.

(Only citations for the above list of statutes, regulations, and other authorities are provided at this point; unless otherwise indicated, their pertinent text is set forth in Appendix C to Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit, herein docketed on May 25, 1984.)

STATEMENT OF THE CASE

The Tony and Susan Alamo Foundation was founded by the petitioner, Tony Alamo, and his wife, Susan Alamo, now deceased, and was incorporated under the laws of the state of California on January 29, 1969. (*See,* Appendix below, hereinafter referred to as Appendix D, App. 1-9.) Subsequent to its incorporation, the Foundation applied for, and received, a certificate of authority to conduct its affairs in the state of Arkansas. As set forth in its Articles, the express purposes of the Foundation are:

> To establish, contain, and maintain an Evangelistic Church; to conduct religious services, . . . to educate, ordain, support, and appoint ministers, evangelists, missionaries, and workers in connection therewith, . . . to build, equip, and operate trade schools and workshops and co-ordinate with allied institutions. . . . (*See,* Appendix D, App. 2.)

On December 18, 1974, the Foundation secured an exemption from taxation under § 501(c)(3) of the Internal Revenue Code as a corporation organized and operated exclusively for religious purposes with none of its net earnings inuring to the benefit of any private shareholder or individual. (*See,* Appendix A, App. 2, of Petition for Writ of Certiorari, hereinafter referred to simply as "Appendix A", and *see* Appendix D, App. 12-15.) Such tax exempt status has not been altered, amended, canceled, or revoked, but has been maintained since that time (J.A. 93, 94).

As found by the District Court, the Foundation is "an outgrowth of the evangelistic efforts of Tony and Susan Alamo". (*See,* Appendix A, App. 6.) The Foundation has established churches throughout the United States (Record of Transcript of Court Proceedings held April 28-30, 1982, hereinafter referred to simply as "R", Vol. II, p. 201) and sends individuals across the country to witness and testify about Christian principles and doctrines in rest homes, hospitals, reformatories, and detention centers (R. Vol. II, p. 201). The founder, Tony Alamo, contends that the Foundation is "the strongest soul winning work in the country" (J.A. 93).

The Foundation's evangelical activities are performed by approximately three hundred individuals who are generally referred to as "associates". Prior to their association with the Foundation, most were addicted to or users of drugs or engaged in criminal activity. As found by the District Court, the work of the Foundation, through Tony and Susan Alamo, provided spiritual and moral assistance to these individuals. (*See,* Appendix A, App. 7.) The associates, however, are only a fraction of the people who have been converted, encouraged, or assisted by the Foundation (J.A. 94, 95).

The associates can be distinguished from other individuals who are or were influenced by the Foundation's ministries in that they (the associates) desire to become evangelists or pastors and to "give their life to the Lord" (J.A. 94) and in that they live on Foundation property. As stated by Tony Alamo, before these individuals are taken into the Foundation, they must "convince us without shadow of a doubt" that they "really want to become evangelists, . . . [or] pastors, [and] that [they] want to give their life to the Lord" (J.A. 94).

Though the Foundation receives contributions from the public, it does not solicit them. (*See,* Appendix A, *Memorandum and Order,* App. 8.) One source of income is the operation of the following:

ACTIVITY	TYPE OF ACTIVITY	LOCATION
Alamo Discount Grocery	Retail sales of groceries	Alma, AR
Alamo Construction	Construction	Alma, AR
Alamo Telegraph	Western Union	Alma, AR
Alamo Auto Repair	Vehicle Repair	Alma, AR
Alamo Freight	Freight-trucking	Alma, AR
Alamo Ready-Mix	Ready-mix concrete	Alma, AR
Alamo Farms	Hog farms	Alma, AR
Alamo Roofing	Roofing construction	Alma, AR
Alamo Record Company	Production of records	Alma, AR
Fort Smith Mobile Nursery	Landscaping	Alma, AR
Alamo DX	Service station	Alma, AR
Alamo Restaurant	Restaurant	Alma, AR
Alamo of Nashville	Retail sales of clothing	Nashville, TN
Tennessee Boy	Distribution	Nashville, TN

Though the annual gross volume of sales derived from the activities listed above exceeds $250,000.00, the net operating result was, and continues to be, a loss (R. Vol. II p. 200).

The Secretary contends, and the District Court held, that the above activities are a part of an "enterprise" within the meaning and definition of Section 3(r) of the Act (29 U.S.C. § 203(r)) in that the Foundation operated the activities as businesses under common control for common business purposes. Despite the District Court's conclusion of "enterprise", it made the following findings:

> The Foundation secured an exemption from taxation under 501 (c) (3) of the Internal Revenue Code as a corporation organized and *operated exclusively for religious purposes with none of its net earnings inuring to the benefit of any private shareholder or individual.* (*See, Memorandum and Order,* Appendix A, App. 2, emphasis ours.)
>
> . . .
>
> The Foundation is an outgrowth of the evangelistic efforts of Tony and Susan Alamo. (*See, Memorandum and Order,* Appendix A, App. 6.)

The petitioners contend that the above-listed activities are merely extensions of the Foundation's ministries in that they provide the associates, who were addicted to drugs or engaged in criminal activity, a forum for rehabilitation and a forum for spreading their religious beliefs. Consequently, each separate activity is viewed by the associates as a "church in disguise". In addition, these activities serve the needs of the associates. For example, the restaurant provides, without charge, meals to the associates and their families, as the clothing store freely provides clothing. Many of the activities, though labeled

"commercial enterprise", are operations maintained solely for the benefit of the associates. One such operation is the "Alamo Sewing Room", which was found by the District Court to be a business. The "Alamo Sewing Room" was described, however, by one of the associates as follows: "[T]hat was a sewing bee, like a sewing circle. Women got together; my wife participated in it, went down there and sewed clothes for my little boy, and things like that (R. Vol. II, p. 193).[1]

The Secretary of Labor contends that these activities are related and are conducted for a common business purpose and thus comprise an "enterprise" as defined by Section 3(r) of the Fair Labor Standards Act. 29 U.S.C. § 203(r). The petitioners maintain that these activities were created and are operated exclusively for religious purposes. Notwithstanding the Secretary's position, these activities have been accepted by the Internal Revenue Service as activities related to the Foundation's exempt (religious) purpose (R. Vol. II, p. 202).

The overwhelming majority of the work performed in the operation of these activities is done by the associates. Most of the associates' time, however, is spent in religious activity such as reading the Bible, witnessing, and testifying (J.A. 72-74; J.A. 90).

The associates testified at trial that they consider their association with the Foundation to be ministerial training (J.A. 94). Furthermore, the associates consider their services in the operation of these activities to be on a voluntary basis, without expectation or desire of wages or compensation in any form (J.A. 62; J.A. 78, 79; J.A. 92).

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[1] This is the only evidence presented to the District Court that described the nature of the "Alamo Sewing Room".

As found by the District Court: "The Secretary failed to produce any past or present associates of the Foundation who viewed his work in the Foundation's various commercial businesses as anything other than 'volunteering' his services to the Foundation." (*See, Memorandum and Order,* Appendix A, App. 7.)

The associates do receive benefits from the Foundation in the form of lodging, meals, medical care, clothing, furnishings, and child care.

The Secretary of Labor contends, and the District Court so held, that the associates are "employees" as defined by the Fair Labor Standards Act. The petitioners contend (1) that the associates are not covered by the Act, and (2) that any attempted application would be constitutionally prohibited as well as improper.

On December 19, 1977, in the United States District Court for the Western District of Arkansas, the Secretary of Labor initiated an action against the Tony and Susan Alamo Foundation, Tony Alamo, and Susan Alamo (its officers and founders), and Larry LaRouche, an associate of the Foundation, allegedly in accordance with Section 17 of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 217, for alleged violations of Sections 6, 7, 11, and 15 of the Fair Labor Standards Act (29 U.S.C. §§ 206, 207, 211, and 215).

Other than the petitioners, the alleged violations concern two groups of individuals. The first group is composed of eighteen individuals who were undeniably employees as defined by the Act. These individuals were from "outside" the Foundation and were hired to render specific services. The members of this group throughout

the trial were referred to as "outside workers". The question involving this group was whether the wage received by the "outside workers" was sufficient to meet the minimum wage and overtime provisions of the Fair Labor Standards Act (R. Vol. I, p. 12). The second group is comprised of approximately three hundred individuals who live on Foundation property and who call themselves volunteers. As stated above, the word "associates" was, and is, used to identify the members of this group. (*See, Memorandum and Order,* Appendix A, App. 6, footnote 2.) The Secretary of Labor contends that back wages totaling approximately nineteen million dollars ($19,000,000.00) are due the associates.

On December 13, 1982, and several months following the actual trial of this case, the District Court entered its decision in a forty page *Memorandum and Order.* (*See,* Appendix A, App. 1-40.) As to the "associates", the District Court found them to be "employees" as defined by the Fair Labor Standards Act and directed the defendants and the Secretary to supply each associate with written notice advising "any associate who desires to submit a claim in the form of an affidavit within 45 days of mailing of the notice. . . ." (*See, Memorandum and Order,* Appendix A, App. 39.) The claim would be reduced by the value of the applicable benefits (e.g., lodging, board, etc.) received by each associate. (*See, Memorandum and Order,* Appendix A, App. 40.) On December 23, 1983, the petitioners, seeking the reversal of the orders entered below, filed a Notice of Appeal in the United States Court of Appeals for the Eighth Circuit in accordance with the Federal Rules of Appellate Procedure. On January 13, 1983, the respondent filed Plaintiff's *Motion for Clarification and Amendment of Memorandum Decision and for*

Entry of Judgment. The District Court granted said *Motion,* entered an *Order* modifying the aforesaid *Memorandum and Order,* and entered a *Judgment.* The petitioners accordingly refiled their Notice of Appeal, and the respondent filed his Cross-Appeal seeking a restitutionary injunction.

After considering the parties' Briefs and after hearing oral argument, the United States Court of Appeals for the Eighth Circuit on December 5, 1983, filed its opinion wherein the District Court's Order of December 13, 1982, was vacated and remanded, in part, for determination of the amounts of wages due the associates; such determination to be based either upon the present record or on the record supplemented by such additional evidence as the District Court may afford the parties an opportunity to offer.

Petitions for rehearing were timely filed by both parties, and both were denied as set forth in the *Order* of the Court of Appeals for the Eighth Circuit entered and filed on March 1, 1984.

SUMMARY OF ARGUMENT

I. The Fair Labor Standards Act and its provisions are not applicable to the services performed by the petitioner, Larry LaRouche, or by the other associates of the petitioner Foundation since such services were done without expectation for or desire of compensation or wages. The fact that the associates received food and shelter during the time the services were performed does not force the "employee" label upon them as their services were not for such provisions.

II. Many of the services performed by the associates were performed in a setting that could be considered commercial in nature. Notwithstanding, the voluntary nature of the associates' work should not have been disregarded in light of *Walling v. Portland Terminal Company,* 330 U.S. 148 (1947).

III. The petitioner, the Tony and Susan Alamo Foundation, is a non-profit organization that has secured tax exempt status under 501(c) (3) of the Internal Revenue Code as an organization organized and operated exclusively for religious purposes. Furthermore, the Foundation's activities ("businesses") operate at a loss and are maintained for a forum from which the associates can testify of their religious beliefs and are utilized for the purpose of rehabilitating most of the associates. Accordingly, the label of "employer" or "enterprise" upon the foundation as defined by the Fair Labor Standards Act is improper.

IV. The application of the Fair Labor Standards Act to the petitioners burdens their right to freely exercise their religious belief. Considering the circumstances surrounding the living conditions of the Foundation's associates and the desires of the associates, the requested application is without lawful justification and, consequently, violates the Free Exercise of Religion Clause of the First Amendment.

V. In light of the record keeping requirements of the Act, together with its wage provisions, application of the Act to the petitioners will result in excessively and unconstitutionally entangling government with activities of American churches.

VI. This attempted application of the Act to the petitioners is an arbitrary action that bears no reasonable relation to the purposes sought to be achieved through the Act. It is common knowledge that all religious organizations use the services of volunteers in performing tasks that may be viewed as commercial in nature. In singling out the petitioners, the Secretary violates the Equal Protection Component of the Due Process Clause of the Fifth Amendment.

ARGUMENT

I.

The Petitioner, Larry LaRouche, And The Other Associates Of The Foundation Volunteered Their Services To The Foundation Without Expectation Of Wages Or Compensation In Any Form And, Accordingly, Should Not Have Been Declared To Be "Employees" As Defined By The Fair Labor Standards Act.

As noted above, there are, and at all times relevant to this action were, approximately three hundred (300) individuals associated with the defendant Foundation. These individuals, referred to as associates, generally, serve as witnesses or evangelists and assist and staff the Foundation's churches and missionaries throughout the United States (J.A. 94, 95). Though there are many other individuals who attend and worship at the Foundation's churches and missions, the Secretary of Labor concerns himself only with the associates. The salient issue in this case is whether the associates are "employees" as defined by the Fair Labor Standards Act.

Pursuant to the Court's pre-trial order of March 20, 1982 (J.A. 39), the defendants called three associates to testify concerning their relationship with the Foundation, with the understanding and agreement that their testimony would be representative of all the associates of the Foundation. The Secretary of Labor was given the opportunity to call any associate who would testify differently from the three representative associates.[1] The three who testified in such representative capacity were Bill Levy, Ann Elmore, and Edward Mick (R. Vol. II, pp. 70-194).

In describing the nature of work he did for the petitioner Foundation, Bill Levy testified:

> I volunteer my services in whatever capacity I can be of use; I witness and testify; I go to church services; I seek baptisms with souls; I read with young Christians; I go out on the street and bring the gospel of love to people. . . . I go out on witnessing chains and bring the message to the lost and dying in convalescent hospitals and jails, on the street, witnessing and testifying, whatever. In whatever capacity I am, the main thing that I do is witness for the Lord Jesus Christ (J.A. 49).

Furthermore, Mr. Levy stated he volunteered his services on the Foundation's hog farm (J.A. 50).

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[1] THE COURT: Why don't you pick out two or three of them, and we will assume that if the ones whose statements were furnished testified on that issue they would testify the same way. How will that be, Mr. Fitz? MR. FITZ: I don't suppose there would be any problem with that, Your Honor. THE COURT: Mr. Fitz, if you find some among that group you think would testify to the contrary, of course, you are free to call them (J.A. 39).

Ann Elmore, in describing her activities with the Foundation, stated:

> Well, my main and sole interest is to preach the gospel to other people who are like I was, that they may have that same thing, that they might be saved. So whatever I do,—the first four and a half or five years at the Foundation, I did nothing but read the Bible and pray. I'd go out in the streets and witness and testify. That was all I did the first five years (J.A. 73).

Mrs. Elmore also stated: "I volunteered my time waitressing at our restaurant. And I loved working up there, because I was a witness for the Lord (J.A. 80)."

Ed Mick made the following statements regarding his service for the Foundation:

> I witness and testify. I go out on witnessing chains, hospital wards, intensive care wards, to the streets, the highways, the byways, pass out gospel literature, and compel people to come into the house of the Lord.
>
> . . .
>
> I do some other activities if I am needed, or if I see a place where I can volunteer my services, I cheerfully do so.
>
> . . .
>
> Yes, I have on occasions [worked at the restaurant]. I've gone in and fry cooked, wherever I could help out (J.A. 90).

Tony Alamo, in describing the character of the individual who is accepted by the Foundation and the purpose behind that individual's association with the Foundation, testified as follows:

> [W]e are not out to get people to come to the Foundation, to feed people. And those that volunteer, that say they really want to serve the Lord with all their heart, soul and mind, and body, that really want to become evangelists, that want to become pastors, that want to give their life to the Lord, then they have to convince us without a shadow of doubt before we ever take them in (J.A. 94).

Though the associates admittedly received no wages for their labors, they and their families were provided with food, shelter, clothing, transportation, and medical benefits by the Foundation.

With reference to the benefits he and his family received and in response to the question of whether he expected compensation in the form of these benefits or in any other form, Bill Levy stated:

> [B]ut even if I didn't get such great benefits, I would still do what I am doing because it's my belief in the Almighty.
>
> . . .
>
> I've never expected any compensation, any wages, nor do I even expect to receive any compensation or wages for what I do, for what I do for the ministry of God (J.A. 62).

When Ann Elmore was asked if she expected such benefits as food and shelter, she stated:

I didn't come in—I had gave up much more comfortable circumstances in the so-called world than I was coming into. But I was willing to do that. *I didn't care if I never had another material thing as long as I lived. I wanted to do what was right in the eyes of God. . . . And no one expected any kind of compensation,* and the thought is totally vexing to my soul. It would defeat my whole purpose (J.A. 78, 79). (emphasis ours)

Mrs. Elmore's "purpose" behind her work was not to receive compensation in any form, but was "to do what was right in the eyes of God".

The third associate to testify in a representative capacity was Ed Mick. Mr. Mick made the following remarks regarding the alleged expectation of wages, compensation, or tangible benefits:

I have never had any expectations of compensation nor wages.

. . .

Q. *You don't expect compensation at this time?*

A. *I would not even consider it.*

Q. *Do you expect compensation for some of your activities in the future?*

A. *Never ever* (J.A. 92). (Emphasis ours)

After hearing their testimony and after reading the depositions of several former associates, the District Court found:

The Secretary of Labor failed to produce any *past or present* associate of the Foundation who

viewed his work in the Foundation's various commercial businesses as anything other than "volunteering" his services to the Foundation. Typical of the associates' attitude about the Secretary's efforts in their behalf is that of Ann Elmore. *Mrs. Elmore testified convincingly that she considered her work in the Foundation's businesses as part of her ministry. She views the businesses as a vehicle for preaching, witnessing, and testifying in support of religious beliefs of those associated with the Foundation. She does not work for the Foundation for material rewards; she does it in furtherance of God's command to spread the gospel. Mrs. Elmore said that she never expected any compensation from the Foundation, and the thought of receiving wages for her work is "vexing to my soul".* (Appendix A, App. 7, 8.) (emphasis ours)

Despite these findings, the District Court concluded that the associates were "employees". The Act defines the term "employee" to mean "any individual employed by an employer". (*See,* 29 U.S.C. § 203(e) (1). The term "employ" is defined under the Act to include "suffer or permit to work". (*See,* 29 U.S.C. § 203(g).)

This Court, in the case of *Walling v. Portland Terminal Co.,* 330 U.S. 148, 67 S. Ct. 639, 91 L. Ed. 809 (1947), clarified the meaning of the phrase "suffer or permit to work", as follows:

The definition "suffer or permit to work" was obviously not intended to stamp all persons as employees. . . . [S]uch a construction would sweep under the Act each person who, without promise or ex-

pectation of compensation, but solely for his personal purpose or pleasure, worked in activities carried on by other persons either for their pleasure or profit. But there is no indication from the legislation now before us that Congress intended to outlaw such relationships as these. *The Act's purpose as to wages was to insure that every person whose employment contemplated compensation should not be compelled to sell the services for less than the prescribed minimum wage. Id.* at 330 U.S. 152. (emphasis ours)

The case of *Turner v. Unification Church,* 473 F. Supp. 367, aff'm. 602 F. 2d 458 (1st Cir. 1979) applied *Portland Terminal* to a factual situation similar[2] to the case at hand. In the *Turner* case, the District Court granted the Motion to Dismiss of the defendant, finding that the Complaint failed to state a claim upon which relief could be granted.

In her Complaint, the plaintiff, Shelley Ann Turner, alleged that she was forced to work long hours of compulsory service soliciting money and selling candies, flowers, and tickets for Unification Church rallies. For these efforts *she allegedly received no monetary compensation but was provided with food and shelter.* Viewing the allegations set forth in Turner's Complaint in their most favorable light, the Court, granting the defendant's Motion to Dismiss, stated:

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[2] The *Turner* case and the case under review are similar as to the facts directly relevant to the issue discussed under this point. The cases can be equated in that there was work performed in a "religious" setting and that the individual worker expected no wages or compensation. The similarities of the cases do not extend to religious doctrine, to methods of "recruiting" individuals, or to beliefs regarding solicitation of money.

In order to be covered by the F.L.S.A., plaintiff must be an "employee" as defined by 29 U.S.C. § 203. That section defines the term employee cryptically: "any individual employed by an employer." The term has been interpreted broadly, see *Rogers v. Schenkel,* 162 F.2d 596 (2d Cir. 1947), but *an employee must still be a "person whose employment contemplated compensation." Walling v. Portland Terminal Co.,* 330 U.S. 148, 67 S. Ct. 639, 91 L. Ed. 809 (1947). The plaintiff's complaint indicates that she never contemplated any monetary or tangible compensation from the Unification Church. Certainly, Turner's services cannot be termed voluntary or gratuitous as she was allegedly being held in involuntary servitude.

. . .

Despite the plaintiff's laudable desire "to create a better world", performing services for charitable purposes without expecting any tangible compensation does not give rise to an employer-employee relationship within the meaning of the F.L.S.A. Therefore, plaintiff cannot claim a cause of action under 29 U.S.C. § 216. *Id.* at 377. (emphasis ours)

It is well stated that a person who intends his services to be voluntary and to be rendered without compensation is not an "employee" within the meaning of the Fair Labor Standards Act. *(See also, Rogers v. Schenkel, supra; Bowman v. Pace Co.* 1 WH Cases 119 (5th Cir. 1941).)

In the case at hand, the District Court erroneously stated:

> Although the associates expected no compensation in the form of ordinary wages, they did expect the Foundation to provide them with food, shelter, clothing, transportation, and medical benefits. (Appendix A, App. 8.)

As in *Turner, supra,* the assoicates did receive food and shelter; however, the representative associates testified unequivocally, as noted above, that their efforts were not for material reward and were not given in expectation of benefits such as food and shelter.

Though given the opportunity, the Secretary of Labor failed to produce any associate who would testify that he expected wages or compensation in any form for his efforts. In this regard, the Secretary has failed to meet his burden of proof.

In determining whether an individual is an "employee", one must look to the laborer's intent or expectation. As stated in *Portland Terminal Co., supra,* the Fair Labor Standards Act directs itself to persons "whose employment *contemplated* compensation". The Secretary of Labor argues that the associates *expected* compensation for their labor. Yet, when the associates were asked what their expectations were, their testimony contradicted the Secretary's argument. If expectation is a consideration, which the petitioners believe it is, then the testimony of the representative associates about their expectations should not be ignored.

In an attempt to support his expectation argument, the Secretary states that the associates were totally dependent upon the Foundation and, thus, must have expected some benefits. The record, however, does not support his position. None of the representative associates or the former associates who testified stated that they were totally dependent upon the Foundation for financial support. Nowhere was the question even asked by the Secretary's attorneys. In fact, the record contradicts such an argument. As stated by the representative associates, it was not uncommon for the associates to go outside the Foundation to secure jobs. As stated by Bill Levy:

> A few of us would get together and possibly decide to go out and get a job. It may be planting trees or it may be —. I worked at Flanders Factory in Fort Smith, Arkansas (J.A. 51).

As stated by another representative associate, Ann Elmore, regarding the early portion of her association with the Foundation, she stated: "I had some money from an investment that I lived off of, and I had a very small amount of child support (J.A. 72)."

Donald McLean Wylie, a former associate of the Foundation who was deposed at the request of the Secretary of Labor, stated that he had his own income from a source outside the Foundation while he was living on Foundation property (J.A. 118). Consequently, the record does not support the argument or finding that the associates were totally dependent upon the Foundation for their existence.

The intent and expectations of the associates are clear. Each representative associate testified that it was his (or her) intent to volunteer his services. Each stated that his work was done for religious purposes and that

there was no expectation of wages or compensation in any form. Notwithstanding, the Secretary of Labor is attempting to impose an employee-employer relationship upon the associates and the Foundation. Is it the purpose of the Secretary of Labor to label all volunteer work "employment" so that work in any form or setting is subject to the Fair Labor Standards Act?

None of the associates claimed that they are entitled to wages in any form as a result of their labor. The Secretary of Labor, however, seeks to force the Foundation to pay wages to inviduals who neither expect nor desire the same. As stated by the District Court in its *Memorandum and Order* (Appendix A, App. 6), Mrs. Elmore's attitude was "typical of the associates' attitude about the Secretary's efforts in their behalf", and that to Mrs. Elmore the thought of receiving wages for her work is "vexing to my soul" (J.A. 79).

Accordingly, the assoociates should not have been found to be "employees", and their relationship with the Foundation should not have been labelled "employment".

II.

The District Court Improperly Disregarded The Voluntary Nature Of The Associates' Work Because Some Of The Work Was Done In Activities Customarily Considered "Commercial".

Throughout the District Court's *Memorandum and Order*, the phrase "commercial businesses" is utilized. The District Court appears to focus its concern on those associates who worked in the Foundation's "commercial businesses". In the aforesaid *Memorandum and Order*, the

District Court makes the following conclusions: "The people who worked in the Foundation's commercial businesses . . . are 'employees' of the defendants, Tony Alamo, Susan Alamo and the Foundation within the meaning of the Act." (*See*, Appendix A, App. 36, 37.) The District Court, however, should not have disregarded the voluntary nature of the associates' work simply because some of them might have worked in activities customarily considered "commercial". In the case of *Walling v. Portland Terminal Company, supra*, this Court found: "There is no question that these trainees do work in the kind of activities covered by the Act." 330 U.S. at 151, 91 L. Ed. at 812. Notwithstanding this finding, however, the trainees were held not to be "employees" under the Act as they performed services without promise or expectation of compensation.

In the case of *Rogers v. Schenkel, supra.*, the United States Circuit Court of Appeals for the Second Circuit found that the plaintiff "performed work in interstate commerce for the defendants" and that "his services were those of a helper doing plating work." *Id.* at 597. The court, however, also found that the plaintiff intended his services to be rendered without compensation. Accordingly, and in light of the *Portland Terminal* case, the Court of Appeals reversed the District Court's decision and found no basis for the legal conclusion that the plaintiff was an employee under the Fair Labor Standards Act, notwithstanding the "commercial" nature of the services performed.

Furthermore, in the case of *Turner v. Unification Church, supra.*, it was found that the plaintiff "worked long hours—'often more than 12 hours per day' of 'com-

pulsory services' soliciting money and selling such items as candy, flowers, and tickets for Church rallies". *Id.* at 371. For these efforts the plaintiff received no monetary compensation but was provided with food and shelter. Despite such efforts in activities that could be labelled "commercial", the Court found no employer-employee relationship to exist.

Each of the above-cited cases deal with individuals working in "commercial" activities. Yet, in each case, the Court found the intent and expectations of the parties to be controlling. As stated in *Skidmore v. Swift & Co.*, 323 U.S. 134, 65 S. Ct. 161, 89 L. Ed. 124 (1944): "The law does not impose an arrangement upon the parties. It imposes upon the Courts the task of finding what the arrangement was." 323 U.S. at 137.

In attempting to justify the District Court's holding, the Secretary argues that the Foundation would be given an unfair advantage over possible competitors. He goes on to argue that the use of the volunteers in this setting deprives another worker from receiving compensation for the performance of the same task. The fallacy of this argument can easily be seen when one is forced to consider the church worker who drives the church bus to take the elderly to and from church services to be giving the church an unfair advantage over the local taxi companies that charge for transportation and to be depriving some taxi driver of his normal fare. The Secretary's reasoning would ultimately lead to a finding of competition between local restaurants and the church cafeteria that supplies meals prior to a church service. It leads one to the conclusion that the individual who volunteers one week of his time to remodeling a church home for the needy is depriving another

from a paying construction job. Such an argument has no basis in law and should be rejected by this Court.

The intent and expectation of the associates are clear. As in *Turner, supra.*, the associates performed services for charitable purposes, and as in *Portland Terminal, supra.*, and *Schenkel, supra.*, the associates had not contemplated, expected, or desired compensation for the services performed. In light of the above-cited cases, the associates should not be defined as "employees".

The District Court was in error when it found that the associates were employees as defined by the Fair Labor Standards Act. Based upon the unrefuted evidence, the District Court's legal conclusion in this regard was incorrect. Accordingly, the petitioners request the reversal of the decisions entered below.

III.

The Petitioner, The Tony And Susan Alamo Foundation, Should Not Have Been Found An "Enterprise" As Defined By The Fair Labor Standards Act Since It Is, And At All Times Relevant Hereto Was, A Non-Profit Religious Organization Exclusively Created And Operated For Religious Purposes.

Proof of an enterprise is a prerequisite to the establishment of a minimum wage (Section 6) or overtime compensation (Section 7) violation. (*See,* 29 U.S.C. § 206 and 207.)

Section 3(r) of the Fair Labor Standards Act (29 U.S.C. § 203(r) defines "enterprise" as follows:

(r) "Enterprise" means the related activities performed (either through unified operation or common control) by any person or persons for a common business purpose.

The burden of proving enterprise coverage is upon the Secretary of Labor. (*See, Wirtz v. Kip's Big Boy,* 18 WH Cases 796 (1969).) The Act describes the following three elements that must co-exist before an "enterprise" can be found: (1) related activities; (2) unified operations or common control; and, (3) a common business purpose. (*See also, Marshall v. Elks Club of Huntington, Inc.,* 44 F. Supp. 957 at 966 (1977).)

The Secretary contends, and the District Court so concluded, that the activities of the Foundation were performed for a "common business purpose". The District Court, however, unequivocally found:

> The Foundation secured an exemption from taxation under § 501(c)(3) of the Internal Revenue Code *as a corporation organized and operated exclusively for religious purposes* with none of its net earnings inuring to the benefit of any private shareholder or individual. The exemption has been approved and certified by the Internal Revenue Service. (*See,* Appendix A to Petition for Writ of Certiorari, App. 2.) (emphasis ours)

To qualify for tax exempt status under Section 501(c)3, an organization must be *"organized and operated exclusively for religious,* charitable, scientific, testing for public safety, literary, or educational *purposes"*. I.R.C. § 501 (c) (3). (emphasis ours) As revealed by Defendants' Exhibit 31 (Letter of Exemption from the Internal

Revenue Service, *see,* Appendix D, App. 12-15) and by the testimony of Tony Alamo, the Foundation received its Certificate of Exemption from the Internal Revenue Service on December 18, 1974, and has maintained such tax-exempt status since that time (J.A. 93 and R. Vol. II, p. 197).

The District Court also found:

> The Foundation is an outgrowth of the evangelistic efforts of Tony and Susan Alamo. The affidavits of the "associates" of the Foundation provide *persuasive evidence* that the evangelistic work of the Alamos and/or the Foundation associates has provided spiritual and moral assistance to many people who lacked direction or purpose in their lives and some who were addicted to drugs or engaged in criminal activity. (*See,* Appendix A, App. 6, 7.) (emphasis ours)

The following testimony of Tony Alamo further evidences the non-commercial purposes of the Foundation's activities:

> Q. What you call "businesses", are they associated activities?
>
> A. The associated activities.
>
> Q. Are they profit making?
>
> A. We haven't made any profit on them, and we are a non-profit organization. We use the businesses as churches in disguise. People come in and we witness and testify to them. So they are not what you would call —
>
> Q. So you also use them for rehabilitation and other purposes?

A. Rehabilitation. And our Articles of Incorporation have been authorized to have workshops, rehabilitation workshops. And that's what they are (R. Vol. II, p. 200).

The fact that the Foundation's activities operate at a loss is further evidence of its non-commercial purpose.

These activities are primarily manned or operated by the associates. As pointed out in Point I above, it is difficult to view the reason behind the associates' affiliation with the Foundation as being anything but religious.

In light of the above, it should be concluded that the activities and operations of the petitioner, the Tony and Susan Alamo Foundation, do not fall within the meaning of the word "enterprise" as defined by Section 3(r) of the Fair Labor Standards Act (29 U.S.C. § 203(r)) in that it has not performed related activities for a common business purpose but has operated the aforesaid activities exclusively for religious purposes.

In the Senate Report explaining the meaning of the word "enterprise" as used in this Act, the following was stated: "Eleemonsynary, religious, or educational and similar activities of organizations which are not operated for profit are not included in the term 'enterprise' as used in this bill." S. Rept. No. 145, 87th Conf. 1st Sess. (1961), reprinted in 1961 U.S. Code Cong. & Admin. News pp. 1620, 1660. Cited in *Marshall v. Elks Club of Huntington, Inc., supra.*, at 967. *See also,* S. Rep. No. 1487, 89th Cong., 29 Sess. (1966), reprinted in 1966 U.S. Code Cong. & Admin. News, 3027.

The Foundation's activities are merely means by which the associates defray their living expenses during their

endeavor to promote religious doctrines and belief. The Foundation does not operate for a common business purpose. To the contrary, and as found by the District Court, the petitioner Foundation is "organized and operated exclusively for religious purposes". These activities do not operate at a profit but are supported by charitable donations to the Foundation. The Secretary has failed to meet his burden of proving the Foundation to be an enterprise as defined by the Act. Consequently, the petitioner Foundation is not an "enterprise engaged in commerce or in the production of goods for commerce" within the meaning and definition of Section 3(s) of the Act (29 U.S.C. § 203(s)).

IV.

The Application Of The Fair Labor Standards Act To The Petitioner Foundation And The Individual Petitioners Is In Violation Of The Free Exercise Of Religion Clause Of The First Amendment To The United States Constitution.

It is well settled by this Court that the Free Exercise Clause of the First Amendment is an absolute prohibition against governmental regulation of religious beliefs. *Wisconsin v. Yoder,* 406 U.S. 205, 32 L. Ed. 2d 15, 92 S. Ct. 1526 (1972); *Sherbert v. Verner,* 374 U.S. 398, 10 L. Ed. 2d 965, 83 S. Ct. 1790 (1963); *Cantwell v. Connecticut,* 310 U.S. 296, 84 L. Ed. 1213, 60 S. Ct. 900 (1940). Furthermore, the Free Exercise Clause has been found to provide substantial protection for lawful conduct grounded in religious belief. (*See, Wisconsin v. Yoder, supra; Thomas v. Review Board of Indiana Emp. Security Div.,* 450 U.S. 707, 67 L. Ed. 2d 624, 101 S. Ct. 1425 (1981); *Sherbert v. Verner, supra.*

In highlighting the religious nature of the associates' affiliation with the Foundation, we direct the Court's attention to the following findings of the District Court as set forth in its *Memorandum and Order*. (*See,* Appendix A, App. 1-40.)

> The Foundation secured an exemption from taxation . . . as a corporation organized and operated exclusively for religious purposes. . . . (*See,* Appendix A, App. 2.)
>
> . . .
>
> The Foundation is an outgrowth of the evangelistic efforts of Tony and Susan Alamo. (*See,* Appendix A, App. 6.)
>
> . . .
>
> Practically all of the work performed . . . is done by the associates. . . . (*See,* Appendix A, App. 7; *see also,* Appendix A, App. 7, 8, which concerns the testimony of Ann Elmore.)

The associates desire no compensation for their labor at the Foundation as they consider their work a religious service. They simply want to volunteer their services in furtherance of the Foundation's religious ministries. The application of this Act in this situation violates the associates' right to freely exercise their religious beliefs in that it forces this religious institution to pay wages in prescribed amounts and forces the volunteer worker to accept the same, contrary to his religious convictions.

The requested application further burdens the religious activity of the associates with the detailed record keeping requirements of Section 11 of the Fair Labor

Standards Act (29 U.S.C. § 211), which would require the associates to maintain and keep records of their activities and to have such available for government inspection. To the associates, there is no question that the application of the provisions of the Act would burden the exercise of their religious belief.

As to being forced to receive compensation for her labors, Ann Elmore, one of the representative associates, testified:

> And no one ever expected any kind of compensation, and the thought is totally vexing to my soul. It would defeat my whole purpose (J.A. 79).

Bill Levy, another representative associate had the following to say about the requirement of a wage: "I believe it would be offensive to me to even be considered to be forced to take a wage. It would be an absolute offense to me (J.A. 62) . . . I believe it offends my right to worship God as I choose (J.A. 63)."

Edward Mick, the remaining associate who testified in a representative capacity, similarly noted his objection to the Secretary's demand that he receive a wage (J.A. 92).

In answering a question regarding the record keeping requirement of the Act, the representative associate, Bill Levy, testified:

> It would absolutely hinder me from following my religious convictions, my beliefs in God. In other words, I might be slopping the pigs and a truck driver comes in there, I've got to check off the time I stopped slopping the pigs and go over to the truck driver and write — record how long I talk to the truck driver to

witness to him about the Lord Jesus Christ, and then stop and check that off, and if I prayed with them, how long I prayed with them for. And then if I read the Bible with them, stop and check that off how long I read Bible. And before you know it, I would be just doing nothing but filling sheets all day long (J.A. 59).

Should the Fair Labor Standards Act apply to the Foundation, its activities, and its associates, the Act must also be applicable to (1) an individual who volunteers several hours each week to prepare meals for a church congregation on Sunday and Wednesday nights; (2) an individual who volunteers several hours each week to take the church youth to and from church services and related activities; (3) an individual who volunteers his time and effort to maintain the landscaping around the church building; (4) an individual who volunteers several hours each day to solicit pledges for the church budget; and so on and so on. Surely such application of the Fair Labor Standards Act infringes upon the rights and freedoms guaranteed to the American people by the United States Constitution.

Admittedly, not all overt acts prompted by religious beliefs or principles are free from legislative restrictions. The government may justify a limitation on religious liberty by showing that it is essential to accomplish an overriding governmental interest. *(See, Wisconsin v. Yoder, supra.)*

As stated in *Sherbert v. Verner, supra.*, however:

> It is basic that no showing merely of a rational relationship to some colorable state interest would suffice; in this highly sensitive constitutional area, "[o]nly the gravest abuses, endangering paramount

interest, give occasion for permissible limitation". *Id.* U.S. at 406

No such abuse or danger has been presented here. The Secretary contends that the compelling interest for the governmental intrusion in this case is to protect all covered workers from labor conditions that are detrimental to the maintenance of the minimum standard of living necessary for the health, efficiency, and general well-being of workers.

The representative associates, however, had the following comments about their standard of living: Mr. Levy stated, "I live in a brand new five room house, two bedrooms, living room and kitchen-dining room (R. Vol. II, p. 94)." "We have a school that's provided free of charge, Christian school. . . . (J.A. 61)." "I was a heroin addict off the street . . . I put on maybe eighty pounds since I came to the church. And I am real healthy; my children are very healthy (R. Vol. II, p. 99)." Mrs. Elmore stated, "I live in an apartment house upon Georgia Ridge. It's a beautiful little townhouse. I have a two bedroom apartment, a fireplace, decorator furniture. I live there with my daughter and husband (R. Vol. II, p. 142)." Mr. Mick stated, "I have a three bedroom home, rock home, overlooking a five acre lake, that is newly built for me and my wife. . . . We have a beautiful home, washer, dryer, furniture . . . a custom built fireplace, plush carpets (J.A. 89)." The associates are certainly not in danger of falling below the "minimum standard of living".

The Secretary has argued that the application of the Act does not prevent the associates from donating their income back to the Foundation. One must wonder then, what is the Secretary's "compelling interest" when the

associates do not want a wage and when they will simply give whatever they receive back to the Foundation.

The Secretary also argues that the activities of the Foundation may be considered commercial in nature, and that the Act accordingly applies. The petitioners, however, earnestly state that their activities are exempt from the application of the Act because they are conducted exclusively for religious purposes.

In the case of *Follett v. Town of McCormick, SC.*, 321 U.S. 573, 64 S. Ct. 717 (1944), such conflicting contentions were presented to this Court. The appellant (Follett) was convicted of violating an ordinance of the town of McCormick, which provided:

> [T]he following license on business, occupations and professions to be paid by the person or persons carrying on or engaged in such business . . . within the corporate limits of the Town of McCormick, South Carolina: Agents selling books, per day $1.00, per year $15.00. *Id.* at 64 S.C. 717.

Follett was a Jehovah's Witness and was ordained as a minister by the Watch Tower Bible & Tract Society. He went from house to house selling books. He obtained his living from the money received; *he had no other source of income.* He admittedly had no license and refused to obtain one, claiming that the ordinance restricted freedom of worship in violation of the First Amendment. In reversing the appellant's conviction, this Court, after finding the books the appellant sold to be religious in content, stated:

> We must accordingly accept as bona fide appellant's assertion that he was "preaching the gospel" by going "from house to house presenting the gospel of

> the kingdom in printed form". *Thus we have quite a different case from that of a merchant who sells books at a stand or on the road.*
>
> . . .
>
> *The protection of the First Amendment is not restricted to orthodox religious practices any more than it is to the expression of orthodox economic views. He who makes a profession of evangelism is not in a less preferred position than the casual worker. Id.* at 64 S. Ct. 719. (emphasis ours)

As in *Follett*, this Court was presented with the commercial/religious question in *Murdock v. Com. of Penn.*, 319 U.S. 105, 87 L. Ed. 1292, 63 S. Ct. 870 (1943). In viewing religious activity that could be argued to be commercial in nature, this Court held:

> Situations will arise where it will be difficult to determine whether a particular activity is religious or purely commercial. The distinction at times is vital.
>
> . . .
>
> But the mere fact that the religious literature is "sold" by itinerant preachers rather than "donated" does not transform evangelism into a commercial enterprise. If it did, then the passing of the collection plate in church would make the church service a commercial project.
>
> . . .
>
> It is plain that a religious organization needs funds to remain a going concern. But an itinerant evangelist, however misguided or intolerant he may be, does not become a mere book agent by selling the Bible or religious tracts to help defray his expenses

or to sustain him. Freedom of speech, freedom of the press, freedom of religion are available to all, not merely to those who can pay their own way. 319 U.S. at 111, 63 S. Ct. at 874.

As stated above: "[A]n evangelist . . . does not become a mere book agent by selling the Bible or religious tracts to help him defray his expenses or to sustain him." Likewise, the petitioner Foundation does not become a commercial enterprise or an employer by engaging in activities to generate income to pay expenses necessarily incurred in its efforts to spread the Gospel, and the petitioner, Larry LaRouche, and the other associates do not become "employees" merely by involving themselves in activities, commercial in nature, while pursuing religious goals.

To stamp the labels of "employer", "employee", and "employment" upon the associates' affiliation with the petitioner Foundation and to impose upon such affiliation the regulations set forth in the Fair Labor Standards Act is to deny the petitioner, Larry LaRouche, and the other associates of their right to freely *contribute* their time and effort to religious endeavors and to deny them of their right to live in the religious setting of the Foundation, which is based upon a person's desire to freely and entirely give himself to God's work. The Secretary's request for the imposition of minimum wage and overtime compensation ignores the desires of the Foundation and its associates to continue this Christian ministry, which is knowingly made possible only by the volunteer efforts of the associates. In short, the imposition of the aforesaid Act and its regulations upon the Foundation and its activities will quickly lead to the demise of this Christian effort. It is common knowledge that charitable organizations and

their projects or programs exist only because of volunteer help. Such application is in violation of the right of the petitioner, Larry LaRouche, and the other associates, to freely exercise their religious beliefs.

V.

Application Of The Fair Labor Standards Act To The Petitioners Is Violative Of The Establishment Clause Of The First Amendment To The United States Constitution.

In addition to the minimum wage and overtime provisions (29 U.S.C. §§ 206, 207), the Fair Labor Standards Act provides:

> Every employer subject to any provision of this chapter or of any order issued under this chapter shall make, keep, and preserve such records of the persons employed by him and of the wages, hours, and other conditions and practices of employment maintained by him and shall preserve such records for such period of time, and shall make such reports therefrom to the Administrator. . . . (29 U.S.C. § 211(c))

29 C.F.R. § 516.1, *et seq.*, not only details the information to be included in the above-noted records, but also notes the following requirement: "All records shall be open at any time to inspection and transcription by the Administrator or his duly authorized and designated representative." 29 C.F.R. § 516.7(b).

The Secretary desires to impose such provisions upon the petitioner Foundation. These provisions place the Foundation and its associates under constant government-

al supervision. The effects of such governmental scrutiny are to (1) inhibit the efforts of the associates in their desire to "spread the Gospel" and (2) to entangle this religious effort with governmental regulations. Consequently, the application of the Act in this case violates the Establishment Clause of the First Amendment.

The Establishment Clause of the First Amendment commands that "Congress shall make no law respecting an establishment of religion. . . ." "In the words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between church and state'." *Everson v. Board of Education*, 330 U.S. 1, 16, 91 L. Ed. 711, 67 S. Ct. 504 (1947). It is well settled, however, that not all governmental involvement with religion is forbidden.

In the case of *Lemon v. Kurtzman*, 403 U.S. 602, 29 L. Ed. 2d 745, 91 S. Ct. 2105 (1971), this Court enunciated the following three tests that had developed in determining whether the involvement of government with religion is forbidden or permitted:

> First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion [citations omitted]; finally, the statute must not foster "an excessive government entanglement with religion". *Id.* at 755, 756.

The Act in question has a secular legislative purpose; however, a primary effect of the Act, if it is to be applied as the Secretary desires, is to seriously inhibit religious activity, which is accomplished through the efforts of volunteers.

It is common knowledge that charitable and religious organizations would not be able to provide the services they currently make available if it were not for the labor of volunteers.[3]

Furthermore, the regulation of religious activity of the Foundation and its associates as proposed by the Secretary fosters excessive government entanglement with religion. Government regulation in this area would prohibit one from freely contributing his time and effort to a religious organization and would require detailed record-keeping of all activity, such records being subject to constant review by Department of Labor officers. If the Secretary is successful in imposing the Act upon the defendants, one must ask whether churches in America must pay the minimum wage to its volunteer workers who regularly cook the dinner meal for the church members on Sunday and Wednesday nights prior to prayer meetings.

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[3] No one is sure how many Americans actually do volunteer work each year, however as noted in W. V. Thomas, *Volunteerism in the Eighties*, 1980 (published by Congressional Quarterly, Inc.), at page 907: "A 1979 Gallup Poll indicated that 70 percent of the nation's adults were willing to participate in neighborhood betterment activities or assist in social service tasks. The last major study of volunteering, conducted in 1974 by ACTION, the federal volunteer agency, and the U.S. Census Bureau, found that 24 percent of the population—or 37 million people over the age of 13—were volunteering their time and effort in one way or another. The study, "Americans Volunteer: 1974", said that volunteers worked an annual total of 137 million hours, the equivalent of 3.4 million people working a 40-hour week. However, the survey only covered the activities of organized vounteers, and much of the volunteer and charity work done in the United States is spontaneous. The American Association of Fund-Raising Counsel, a private philanthropy research group, estimates that if informal volunteers were counted along with organized volunteers, the total would be as high as 68 million people each year."

Will a church be forced to pay such wages despite the workers' refusal to accept the same? Will records be required? If so, will they be subject to constant supervision by the Secretary of Labor? Will a church be forced to pay minimum wage to and keep records for the individual who donates two full weeks of every year to assist in carpentry work around the church or around one of its missions? Is such individual an employee if the Church provides housing and food for the individual during those two weeks? Will a church be required to keep records of all volunteers' activities? The answers to each of the above questions must be answered in the affirmative if the Secretary is successful in his cause now before the Court. Consequently, the church and its activities will be excessively entangled with government regulation. The effect of the imposition of the Act upon volunteer workers for a religious organization would be to produce a continuing day-to-day relationship between a church (and its policies) and the Government. Such relationship is prohibited by the Establishment Clause of the First Amendment.

VI.

The Application Of The Fair Labor Standards Act To The Petitioner Is Violative Of The Equal Protection Component Of The Due Process Clause Of The Fifth Amendment To The United States Constitution.

The fact that the associates intended to volunteer their services to the Foundation is undisputed. The testimony of the associates, who represented all other associates, left little doubt as to their intentions and expectations. Even the former associates who had become

disillusioned with the Foundation were found to have considered themselves "volunteers" of their services while at the Foundation. (*See, Memorandum and Order,* Appendix A, App. 7.) Despite this evidence, the Secretary seeks to impose the terms and provisions of the Fair Labor Standards Act upon the volunteers and upon the organization utilizing their services.

The application of the Act to the petitioners denies them the equal protection of the law that is guaranteed to them through the equal protection component of the Fifth Amendment.[4]

It is admitted that the volunteers of the Foundation receive room, board, medical care, and clothing from the Foundation. As a result of these provisions, the Secretary attempts to justify his application of the Act; however, such provisions are similar to those given to the workers in the special volunteer programs supervised by the ACTION agency (the principal agency in the Federal government for administering volunteer service programs).[5]

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[4] This Court has declared that it often tests the validity of federal legislation under the due process clause of the Fifth Amendment by the same rules of equality that are employed to test the validity of state legislation under the equal protection clause of the Fourteenth Amendment.

[5] ACTION is the principal agency in the Federal Government for administering volunteer service programs. ACTION includes Peace Corps, VISTA (Volunteers in Service to America), the Foster Grandparent Program, RSVP (Retired Senior Volunteer Program), the Senior Companion Program, and the National Center for Service Learning.

Each ACTION volunteer receives a food and lodging allowance, a personal living allowance of $75.00 per month, an adjustment allowance to cover the initial cost of securing and setting up living quarters, and at the conclusion of his term of service a stipend of $50.00 for each month of service. 45 C.F.R. § 1213.3-1(a)-(d). In addition, such volunteer receives transportation (45 C.F.R. § 1213.3-2), health benefits (45 C.F.R. § 1213.3-3), legal support (45 C.F.R. § 1213.3-5), and vacation leave (45 C.F.R. § 1213.3-6).[6] Notwithstanding the receipt of these benefits, the ACTION volunteer "shall not be deemed Federal employees and shall not be subject to the provisions of laws relating to Federal officers and employees and Federal employment". 42 U.S.C. § 5055. Thus, the ACTION volunteer falls outside the definition of an "employee" as set forth in the Fair Labor Standards Act. 29 U.S.C. § 203(e)(1). Despite their volunteer status, the ACTION workers are committed to a full year of service (45 C.F.R. § 1213.2-1) and must be "available for service without regard to regular working hours seven days a week except for periods of approved leave (45 C.F.R. § 1213.2-5). Furthermore, the ACTION volunteer must be ready to perform any work assignments as may be determined appropriate by the ACTION Director (42 U.S.C. § 4953 (c)).

In view of the fact that the associate of the Foundation is free to leave the Foundation at any time, free to work when and where he desires, and free to leave his job

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[6] "Provisional volunteer" under ACTION Programs do not receive any allowance nor do they accrue stipends. They receive only their food and lodging and "a nominal amount of money for living expenses". 45 C.F.R. § 1213.3-1(e).

to witness or pray, it is difficult to see the rationale for treating the Foundation's volunteers as employees under the Fair Labor Standards Act while excusing the ACTION volunteers.

The constitutional guarantee of equal protection of the laws requires that all persons shall be treated alike under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed. (*See, Hartford Steam Boiler Inspection and Ins. Co. v. Harrison*, 301 U.S. 459, 81 L. Ed. 1223, 57 S. Ct. 838 (1937).) This principle has been stated to include within its purview of equality exemptions from liabilities. (*See, Cotting v. Godard*, 183 U.S. 79, 46 L. Ed. 92, 22 S. Ct. 30 (1901). Certainly, the petitioners recognize that the equal protection clause does not protect against all distinctions made in legislation or the application of the same. Equal protection in its guaranty permits classification that is reasonable and not arbitrary and which is based upon material differences having a reasonable relation to the person involved and to the public purpose sought to be achieved by the legislation in question.

The purpose of the Fair Labor Standards Act is stated to be the elimination of various labor conditions that are "detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers" (29 U.S.C. § 202). It is impossible to see the basis for finding the Foundation's volunteers a threat to the Act's purpose while allowing the ACTION volunteers to operate beyond its reach. Furthermore, it is common knowledge that all religious organizations use the services of volunteers. Many of their activities may be viewed as commercial in nature.

The difficulty in justifying the unequal treatment becomes even greater when one considers the workers who are expressly exempt from the minimum wage and overtime requirements of the Act. The following are just a few of such exemptions: any employee who is employed in domestic service (29 U.S.C. § 213(a)(21); any employee employed in a bona fide executive, administrative, or professional capacity . . . (29 U.S.C. § 213(a)(1); any employee employed by any retail or service establishment . . . if more than 50 per centum of such establishment's annual dollar volume of sales of goods or services is made within the state in which the establishment is located and such establishment is not an enterprise. . . . (29 U.S.C. § 213 (a)(2))

The attempted application of the Fair Labor Standards Act to the petitioners is an arbitrary action, and such bears no reasonable relation to the purpose sought to be achieved by the Act. Consequently, the application of the Act to the petitioners is violative of the equal protection component of the Due Process Clause of the Fifth Amendment.

CONCLUSION

In light of the above, the petitioners respectfully request this Court to reverse the decisions of the United States Court of Appeals for the Eighth Circuit and the United States District Court for the Western District of Arkansas.

Respectfully submitted

GEAN, GEAN & GEAN
First America Building
Suite 500, 524 Garrison Avenue
Fort Smith, Arkansas 72901
By ROY GEAN, JR.

APPENDIX D

[For Appendix A, B, or C, see Appendix to Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit, herein docketed on May 25, 1984.]

DEFENDANT'S EXHIBIT 28

1. Articles of Incorporation of Tony and Susan Alamo Foundation (A Non-Profit Corporation) (Defendants' Exhibit 28)
2. Certificate of Amendment of Articles of Incorporation of Tony and Susan Alamo Foundation, A California Corporation (Defendants' Exhibit 29)
3. Secretary of State of the State of Arkansas Certificate of Incorporation of Foreign Non-Profit Corporation, Tony and Susan Alamo Foundation (Defendants' Exhibit 30)
4. Internal Revenue Service Determination Letter of December 18, 1974, Noting the Tax-Exempt Status of the Tony and Susan Alamo Foundation (Defendants' Exhibit 31)

ARTICLES OF INCORPORATION OF TONY AND SUSAN ALAMO FOUNDATION (A Non-Profit Corporation)

(Filed January 29, 1969)

KNOW ALL MEN BY THESE PRESENTS:

That we, the undersigned, have this day voluntarily associated ourselves together for the purpose of organizing a corporation under Part 1 of Division 2 of the Cor-

porations Code of the State of California, also known as the General Non-Profit Law, and we do hereby certify:

ARTICLE I

The name of the Corporation is
TONY AND SUSAN ALAMO FOUNDATION

ARTICLE II

1. The specific and primary purposes for which this corporation is organized under the meaning of Section 501(c)(3) of the United States Internal Revenue Code are:

(a) To establish, conduct and maintain an Evangelistic Church; to conduct religious services, to minister to the sick and needy, to care for the fatherless and to rescue the fallen, and generally to do those things needful for the promotion of Christian faith, virtue, and charity.

(b) To carry on and to conduct schools for the study of the Holy Bible, to organize churches and missions subsidiary to the parent corporation and to educate, ordain, support and appoint ministers, evangelists, missionaries and workers in connection therewith, and, in pursuit thereof, to establish branch societies through its officers and agents appointed and delegated for that purpose in different states and territories of the United States.

(c) To secure the Americanization of the foreign born; to provide for the educational and industrial welfare of the poor and neglected by the inspiration of industrial education and mental and spiritual uplift and by the encouragement of thrift and helpful conditions of living and labor, to endeavor to prevent pauperism; by means of Christian cooperation to relieve the temporary

distresses of the unfortunate; to build, equip and operate trade schools and workshops and co-ordinate with allied institutions; to establish and conduct charitable medical facilities; to carry on educational and other charitable and non-profit projects relating to welfare and benevolent work among the poor and needy; and to assist by gifts, grants, or otherwise, other corporations, funds, trusts, and foundations in the carrying on of any projects relating to said religious program.

2. In furtherance of and as limited by its specific and primary purposes, the corporation shall have the following powers in addition to the powers conferred by law, provided, however, that any activity engaged in pursuant to those powers which is not in furtherance of the specific and primary purposes of the corporation as aforesaid, shall not exceed an insubstantial part of the activities of the corporation:

(a) To solicit, collect, receive, acquire, hold and invest money and property, both real and personal, received by gifts, donation, contribution, bequest, devise or otherwise; to sell and convert property, both real and personal, into cash and to invest as the Board of Directors of the corporation deem necessary or expedient; and to use the funds of this corporation and the proceeds, income, rents, issues and profits derived from said properties for the purposes for which this corporation is formed.

(b) To purchase or otherwise acquire, own, hold, use, lease (either as lessor or lessee), sell, exchange, assign, convey or otherwise dispose of and mortgage or otherwise hypothecate or encumber real and personal property.

(c) To borrow money and incur indebtedness, and to secure the repayment of the same by mortgage, pledge, deed of trust, or other hypothecation of property, both real and personal.

(d) To issue bonds, notes, debentures and other negotiable or non-negotiable instruments and securities.

(e) To hold, purchase or otherwise acquire, sell, assign, transfer, pledge, hypothecate or otherwise dispose of bonds, notes or other evidence of indebtedness of any corporation or individual and of shares of capital stock of any corporation.

(f) To act as trustee under any trust incidental to the principal objects of the corporation, and to receive, hold, administer and expend funds and property subject to such trust.

(g) Nothing herein contained shall be construed as authorizing, or intending to authorize, the performance at any time of any act, or acts, that are unlawful for a non-profit corporation.

(h) And, lastly, to do and perform every act or thing, which may be necessary, expedient, incidental to, or proper, or which may be by its Board of Directors deemed necessary, expedient, incidental to, or proper, to the carrying on of the work of the corporation.

(i) Sub-paragraphs (a) through (h) inclusive, of this Paragraph 2 of Article II, as hereinabove set forth, shall be construed as separate statements conferring independent purposes and powers upon the corporation, and the statements contained in each

Clause of said Sub-paragraphs shall not be limited by references to or inferences from one another.

(j) Notwithstanding any of the above statements of purposes and powers, this corporation shall not engage in activities which in themselves are not in furtherance of the religious purposes set forth hereinabove.

ARTICLE III

That this corporation is organized pursuant to the General Non-profit Corporation Law of the State of California and is not organized, nor shall it be operated, directly or indirectly, for pecuniary gain or profit. There shall not be any distribution of gains, profits or dividends, or other assets to the members thereof or to any officer, director or individual. The property, assets, profits and income of this corporation are irrevocably dedicated to religious and/or charitable purposes and no part of the profits or income or assets of this corporation shall ever inure to the benefit of any director, officer or member thereof or to the benefit of any private shareholder or individual. Upon the dissolution, liquidation, or winding up of this corporation, or upon abandonment, the assets of this corporation remaining after payment of or provision for all debts and liabilities of this corporation shall be donated to such non-profit corporation or corporations, association or associations, fund or funds, or foundation or foundations, as the directors of this corporation may designate; provided that no portion of such assets shall be donated to any organization other than one organized and operated exclusively for religious and/or charitable purposes and which has established its tax-exempt status under Section

501(c)(3) of the Internal Revenue Code. If this corporation holds any assets in trust, such assets shall be disposed of in such manner as may be directed by decree of the Superior Court of the county in which the corporation's principal office is located, upon petition therefor by the Attorney General or by any person concerned in the liquidation, in proceedings to which the Attorney General is a party.

ARTICLE IV

The county in the State of California where the principal office for the transaction of the business of the corporation is located is the County of Los Angeles.

ARTICLE V

1. The Board of Directors of the corporation shall be known and described as the Board of Directors, and that the Directors of this corporation shall be known and described as Directors.

2. The number of Directors of the corporation shall be three (3) until such number is changed by an amendment to those Articles of Incorporation or by a By-Law adopted by the members.

3. The names and addresses of the incorporating Directors of the corporation who are to serve as Directors until the election of their successors as provided by law, are as follows:

NAME	ADDRESS
SUSAN ALAMO	1932½ Cahuenga Hollywood, California 90028

TONY ALAMO	1932½ Cahuenga Hollywood, California 90028
PHYLLIS GROMOUSKY	1932½ Cahuenga Hollywood, California 90028

ARTICLE VI

This corporation shall have such membership or classes thereof as may be specified in its By-Laws.

ARTICLE VII

This corporation shall not carry on by propaganda or other advocate or act with the view of, directly or indirectly, influencing legislation of any kind or character of any public or other governmental agency. None of the funds or other assets of this corporation shall be used, directly or indirectly, for partisan political purposes or to promote or advocate the candidacy or appointment of any persons seeking election or appointment to any public office.

ARTICLE VIII

In furtherance and not in limitation to the powers conferred by the laws of the State of California, the Board of Directors is hereby authorized:

To make, alter, amend or repeal the By-Laws of the corporation, provided, however, that the members shall also have authority to make, amend or repeal any By-Laws, and any By-Laws passed, amended or repealed by the members in the manner provided in the By-Laws shall control and take precedence over any By-Laws or regulations passed by the Directors.

ARTICLE IX

Nothing in these Articles of Incorporation, including Article XI, shall be interpreted as permitting a change to a nonexempt purpose or the distribution of assets to a nonexempt organization.

ARTICLE X

The existence of this corporation is to be perpetual.

ARTICLE XI

This corporation reserves the right to amend, alter, change or repeal any provision contained in these Articles of Incorporation in the manner now or hereinafter prescribed by statute, and all rights conferred on members herein are granted subject to this reservation.

IN WITNESS WHEREOF, we, the undersigned Incorporators, including each person named in the foregoing Articles of Incorporation as the First Directors of said corporation, have executed these Articles of Incorporation this 16th day of December, 1968.

/s/ Susan Alamo
/s/ Tony Alamo
/s/ Phyllis Gromousky

COUNTY OF LOS ANGELES)
) SS
STATE OF CALIFORNIA)

On this 16th day of December, 1968 before me, the undersigned, a Notary Public in and for said County and State, personally appeared SUSAN ALAMO, TONY ALAMO, and PHYLLIS GROMOUSKY, known to me to be the persons whose names are subscribed to the foregoing

Articles of Incorporation, and acknowledged to me that they executed the same.

WITNESS my hand and official seal.

OFFICIAL SEAL
S. A. ADAIR
Notary Public-California
Principal Office In
Los Angeles County

/s/ S. A. Adair
Notary Public in and for said County and State.

My commission expires:
January 22, 1971

DEFENDANT'S EXHIBIT 29

CERTIFICATE OF AMENDMENT OF ARTICLES OF INCORPORATION OF TONY AND SUSAN ALAMO FOUNDATION A CALIFORNIA CORPORATION

(Filed in the Office of the Secretary of State of the State of California June 20, 1975)

MARCH FONG, EU, Secretary of State
/s/ James E. Harris, Deputy

TONY ALAMO and SUSAN ALAMO certify:

1. That they constitute at least two-thirds of the incorporators of TONY AND SUSAN ALAMO FOUNDATION, a California corporation.

2. That they hereby adopt the following amendment of the Articles of Incorporation of said corporation. ARTICLE II, paragraph 1(c) is amended to read as follows:

"(c) To secure the Americanization of the foreign born; to provide for the educational and industrial welfare of the poor and neglected by the inspiration of industrial education and mental and spiritual uplift and by the encouragement of thrift and helpful conditions of living and labor, to endeavor to prevent pauperism; by means of Christian cooperation to re-

lieve the temporary distresses of the unfortunate; to co-ordinate with allied institutions; to carry on educational and other charitable and non-profit projects relating to welfare and benevolent work among the poor and needy; and to assist by gifts, grants, or otherwise, other corporations, funds, trusts, and foundations in the carrying on of any projects relating to said religious program.

3. That said corporation has admitted no members other than the incorporators.

/s/ TONY ALAMO
Incorporator

/s/ SUSAN ALAMO
Incorporator

STATE OF ARKANSAS)
) ss.
COUNTY OF CRAWFORD)

TONY ALAMO and SUSAN ALAMO being duly sworn depose and say:

They are the incorporators who have signed the foregoing Certificate of Amendment of Articles of Incorporation; they have read said document and know the contents thereof; and the same is true of their own knowledge.

/s/ TONY ALAMO
Incorporator

/s/ SUSAN ALAMO
Incorporator

Subscribed and sworn to before me
on June 9, 1975.

Myrtle E. Thompson,
Notary Public for the State of Arkansas,
County of Crawford.

My Commission Expires December 1, 1976.

DEFENDANT'S EXHIBIT 30

STATE OF ARKANSAS
DEPARTMENT OF STATE

George O. Jernigan, Jr., Secretary of State

CERTIFICATE OF INCORPORATION OF
FOREIGN NON-PROFIT CORPORATION

I, George O. Jernigan, Jr., Secretary of State of the State of Arkansas, Do Hereby Certify, that

TONY AND SUSAN ALAMO FOUNDATION

has filed in the office of the Secretary of State, a duly certified copy of its Articles of Association in compliance with the provisions of the law, with their petition for incorporation under the name or style of

TONY AND SUSAN ALAMO FOUNDATION

they are therefore hereby declared a body politic and corporate, by the name and style aforesaid, with all the powers, privileges and immunities granted in the law thereunto appertaining.

In Testimony Whereof, I have hereunto set my hand and affixed my official Seal

This 23rd day of August, 1976
GEORGE O. JERNIGAN, JR.

Secretary of State.

(SEAL)

By /s/ Carolyn Greene, *Deputy.*

DEFENDANT'S EXHIBIT 31

INTERNAL REVENUE SERVICE
Washington, DC 20224
Date: December 18, 1974
In reply refer to:
E:EO:T:R:1-2

Tony and Susan Alamo Foundation
13136 Sierra Highway
Saugus, California 91350

Employer Identification Number: 23-7165422
Key District: Los Angeles

Accounting Period Ending: December 31
Form 990 Required: × Yes

Dear Applicant:

Section 508(a)(2) of the Internal Revenue Code of 1954 states that an organization organized after October 9, 1969, shall not be treated as an organization described in section 501(c)(3) for any period before the giving of notice that it is applying for recognition of exempt status, if such notice is given after the time prescribed by regulations.

Section 1.508(a)(2)(i) of the Income Tax Regulations states that an organization seeking exemption under section 501(c)(3) must file the notice described in section 508 (a) within 15 months from the end of the month in which the organization was organized, or before March 22, 1973, whichever comes later. Such notice is filed by submitting a properly completed and executed Form 1023, exemption application, with the District Director.

Our records indicate that we received notice on May 1, 1974, which is more than 15 months from the date on which you were incorporated. Therefore, the provisions of section 508(a)(2) are applicable to you.

Based on information supplied, and assuming your operations will be as stated in your application for recognition of exemption, we have determined you are exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code for years beginning May 1, 1974.

We have further determined you are not a private foundation within the meaning of section 509(a) of the Code, because you are an organization described in sections 509(a)(1) and 170(b)(1)(A)(vi) for years beginning May 1, 1974.

You are not liable for social security (FICA) taxes unless you file a waiver of exemption certificate as provided in the Federal Insurance Contributions Act. You are not liable for the taxes imposed under the Federal Unemployment Tax Act (FUTA).

Since you are not a private foundation, you are not subject to the excise taxes under Chapter 42 of the Code. However, you are not automatically exempt from other Federal excise taxes.

Contributions made to you before May 1, 1974, are not deductible under section 170 of the Code. Donors may deduct contributions to you as provided in section 170 of the Code for years beginning May 1, 1974. Bequests, legacies, devises, transfers, or gifts to you or for your use made on May 1, 1974, and thereafter, are deductible for Federal estate and gift tax purposes if they meet the applicable provisions of sections 2055, 2106, and 2522 of the Code.

If your purposes, character, or method of operating is changed, you must let your key District Director know so he can consider the effect of the change on your exempt status. Also, you must inform him of all changes in your name or address.

The block checked at the top of this letter shows whether you must file Form 990, Return of Organization Exempt From Income Tax. If the Yes box is checked, you are required to file Form 990 only if your gross receipts each year are normally more than $5,000. If a return is required, it must be filed by the 15th day of the fifth month after the end of your annual accounting period. The law imposes a penalty of $10 a day, up to a maximum of $5,000, for failure to file the return on time.

You are not required to file Federal income tax returns unless you are subject to the tax on unrelated business income under section 511 of the Code. If you are subject to this tax, you must file an income tax return on Form 990-T. In this letter we are not determining whether any of your present or proposed activities are unrelated trade or business as defined in section 513 of the Code.

Please use your employer identificatoin number on all returns you file and in all correspondence with the Internal Revenue Service.

—3—

This ruling is conditioned upon the receipt of your amended Articles of Incorporation, as proposed in our letter of October 4, 1974, which you agreed to on November 11, 1974. The copy which you submit must show that the amendment was filed with the appropriate State Official and the date thereof.

We are informing your key District Director of this action. Please keep this ruling letter in your permanent records.

Sincerely yours,

/s/ Milton Cerny

Chief, Rulings Section 1
Exempt Organizations
Technical Branch

MOTION FILED

No. 83-1935 (4)

JAN 7 1985

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

TONY AND SUSAN ALAMO FOUNDATION, et al.,

Petitioners,

—v.—

RAYMOND J. DONOVAN, SECRETARY OF LABOR,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MOTION FOR LEAVE TO FILE AND BRIEF AMICUS CURIAE OF THE AMERICAN CIVIL LIBERTIES UNION IN SUPPORT OF RESPONDENT

GILBERT GAYNOR
ACLU Foundation of
Southern California
633 South Shatto Place
Los Angeles, CA 90005
(213) 487-1720

BURT NEUBORNE,
Counsel of Record
CHARLES S. SIMS
American Civil Liberties
Union Foundation
132 West 43rd Street
New York, New York 10036
(212) 944-9800

Attorneys for *Amicus Curiae*

MOTION OF THE
AMERICAN CIVIL LIBERTIES UNION
FOR LEAVE TO FILE A
BRIEF AMICUS CURIAE
IN SUPPORT OF RESPONDENT

The American Civil Liberties Union respectfully moves for leave to file the attached brief amicus curiae in support of Respondent.

The American Civil Liberties Union (ACLU) is a nationwide, non-partisan organization of over 250,000 members dedicated to the protection of fundamental civil rights and liberties. The ACLU is committed to the principles of separation of church and state and the free exercise of religion. The ACLU believes the values underlying the Religion Clauses are best served when government maintains a position of neutrality, avoiding both preference for and discrimination against religion, while respecting free exercise concerns.

The point at which an individual or group may seek a religiously based exemption from an otherwise valid obligation of citizenship poses sensitive and difficult issues requiring a resolution of two sets of tensions -- the tension betweeen the requirement of strict neutrality imposed by the Establishment Clause and the desire of a benevolent State to enhance the Free Exercise of religion; and the tension between democratic commitment to majority rule and respect for individual religious conscience. In certain cases, resolving those tensions may prove extremely difficult. This case, however, is not difficult. The claim of religious conscience asserted by an employer to justify an exemption from the payment of minimum wage legislation to employees engaged in secular work does not implicate a genuine issue of religious conscience because it has nothing

to do with worship and does not involve an intrusion into individual religious belief. The Fair Labor Standards Act (FLSA) is secular social legislation, applicable equally to all. The petitioners in this case seek a specialized religious exemption from this general law. Because in our view such an exemption is not warranted on these facts by the Religion clauses, and would itself be violative of the principle of neutrality, the ACLU respectfully submits this brief amicus curiae in support of respondent's position.

Respondent has consented to the filing of this brief amicus curiae. Petitioner has not granted consent.

Dated: December 28, 1984

BURT NEUBORNE,
Counsel of Record
American Civil Liberties
Union Foundation
132 West 43rd Street
New York, New York 10036
(212) 944-9800

Attorney for Amicus Curiae

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TABLE OF AUTHORITIES

INTEREST OF AMICUS

The interest of amicus is set forth in the motion for leave to file attached hereto.

INTRODUCTION AND SUMMARY OF ARGUMENT

1. Amicus believes that the District Court and the Court of Appeals properly found the "associates" in this case to be employees within the meaning of the Fair Labor Standards Act, and properly held the petitioners to be subject to the Act. However, in light of the interest of amicus, our argument in this brief will be limited to the questions whether, assuming arguendo, the statutory applicability of the FLSA petitioners are entitled to an exemption from the Act under the Free Exercise and Establishment Clauses of the First Amendment.

2. Application of the federal minimum wage laws to petitioners does not violate the Free Exercise Clause. The application of the minimum wage law does not exert substantial

pressure on adherents to modify their religious beliefs or practices, and is amply justified in any event by the compelling governmental interest in uniform application of the minimum wage laws.

3. Application of the federal minimum wage laws to the petitioners does not violate the Establishment Clause. The Establishment Clause should not shield religiously-affiliated organizations engaged in secular commercial activities from the general labor laws. Since petitioners have chosen to compete in the secular marketplace, their claim to a religiously-based exemption is at its lowest ebb. The recordkeeping requirements of the Act do not excessively entangle government with religion and pose no serious threat to church autonomy. Indeed, to exempt religiously-affiliated organizations engaged in secular or commercial activities from the federal

minimum wage laws would risk unwarranted favoritism of religion.

I. APPLICATION OF THE MINIMUM WAGE PROVISIONS OF THE FAIR LABOR STANDARDS ACT TO RELIGIOUS ORGNAIZATIONS ENGAGED IN SECULAR COMMERCIAL ACTIVITIES DOES NOT VIOLATE THE FREE EXERCISE CLAUSE.

As the Chief Justice noted in United States v. Lee, 455 U.S. 252 (1982), when a religious group elects to engage in secular activities, it may not use the Free Exercise Clause as a mechanism to impose its religious views on the secular society and may not use its religious nature to gain a competitive advantage over secular groups performing the identical functions. Thus, when religious groups have sought exemptions from social welfare legislation designed to advance secular goals, the Court has rejected the request whenever a religious exemption would place unfair burdens on third persons and risk the integrity of a significant government program. E.g., Jacobson v.

Massachusetts, 197 U.S. 11 (1905) (rejecting religious exemption from compulsory vaccination laws); Prince v. Massachusetts, 321 U.S. 158 (1944) (rejecting religious exemption from child welfare laws); United States v. Lee, supra (rejecting religious exemption from social security taxation); Bob Jones University v. United States, 76 L.Ed.2d 157 (1983) (rejecting religious exemption from policies favoring racial equality).

In this case, a religious organization engaged in a variety of secular functions seeks to insulate itself from the minimum wage requirements of the Fair Labor Standards Act because, it claims, its adherents wish to work for less than the minimum wage. The obvious impact of a religious exemption from minimum wage payments on employees and competitors and the serious threat it would pose to the integrity of the minimum wage program would justify -- indeed compel -- a

rejection of petitioner's claim for a religious exemption, even if it were well-founded. However, it does not even qualify as a serious claim for a religious exemption.

In any Free Exercise case, three threshhold questions arise. Is the religious belief or practice sufficiently central to the religion to warrant special constitutional protection?[1] Does the government's action put substantial pressure on the belief or practice?[2] Is the government interest at stake sufficiently important to warrant the possibility that religious belief or practice may be overridden? Only if all three questions are answered affirmatively is it necessary to reach the difficult question of whether a

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[1] Thomas v. Review Board, 450 U.S. 707, 713-16 (1981); United States v. Ballard, 322 U.S. 78 (1944).

[2] Thomas v. Review Board, 450 U.S. at 716-18; Sherbert v. Verner, 374 U.S. 398, 404 (1963).

legitimate government interest can override a sincerely held religious belief. In this case, it is not necessary to reach that question since two of the three threshhold criteria are not satisfied.

First, there is simply no indication, in the Court of Appeals' or District Court's opinions, or in petitioners' brief to this Court, that it is a sincerely held religious tenet of the Alamo Foundation to pay its employees less than a minimum wage. Every desire to advance a person's religion is not the "free exercise" of religion. If it were, then religious organizations could claim exemption from tax laws and a host of other secular laws designed to protect the health, safety and general welfare of employees and the public.[3]

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[3] It is possible, although petitioners have not done so, to construct a more serious religious claim for the foundation's wish not to pay its employees any money, but rather to provide them only with room and board. Conceivably, a church might consider such an
[cont'd. on next pg]

Second, even if the petitioners have standing to assert the religious beliefs of their employees who have potentially adverse interests,[4] the application of the minimum

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arrangement indispensible to a religious relationship between itself and the willing subjects of its ministry, and to their salvation through the church's work. Even if the church sincerely believed that this relationship would be fatally infected were the employees required to accept compensation for their efforts, however, the FLSA, in conjunction with the Internal Revenue Code, does not require the employees to retain any financial benefit. See infra at 8 & n. 5. The only burden on the church-employer under these circumstances is its acceptance of a tax consequence for engaging individuals to perform secular commercial activity. If this is a "burden" for free exercise purposes at all, it is one that is easily overridden by the compelling purposes of the FLSA. See infra at 10-12.

[4] Petitioners may lack standing to advance the purported constitutional rights of their employees, since their interests may well be adverse. Recently, a federal district court faced a situation virtually identical to this one. The Secretary of Labor brought suit to compel a church-operated school employer to pay its non-professional support employees, such as bus drivers and cafeteria workers, the minimum wage. The employer resisted the Secretary's motion for summary judgment, claiming the religious rights of its employees were at stake. The District Court reasoned:

> Ordinarily, one may not assert the constitutional rights of third parties as a defense. Barrows v. Jackson, 346 U.S. 249, 255 (1953). The fact that third parties' constitutional rights may be implicated

[cont'd. on next pg]

wage laws does not exert substantial pressure on adherents to modify their beliefs or practices.

If employees want to work for less than the minimum wage, they can donate their wages back to the religious organization (keeping only enough to pay the income tax owed). Such a transaction has no economic consequences so far as the employee is concerned. While the tax consequences of such a donation may be less favorable for the

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> should this court require defendant to pay minimum wage is no justification for a judicial determination of their possible rights at this time.... The interests of defendants' employees and itself are in fact adverse, even though defendant claims that none of its employees have complained about receiving substandard wages and that they are satisfied with the terms of their employment. Realizing that certain employees may be hesitant about coming forward with complaints about their wages because they fear losing their positions, the court cannot in good conscience permit defendant to stand as their representative on this issue.

Donovan v. Shenandoah Baptist Church, 573 F.Supp. 320, 325-26 (W.D. Va. 1983).

religious organization than employing workers for nothing (because the religious organization is effectively out of pocket the sum total of its employees' income tax on amounts beyond the limited charitable deduction), the employees' religious beliefs are only minimally, if at all, affected. The burden -- if it is a burden -- on an Alamo Foundation employee is no different than that placed on any person by the limitation on charitable deductions.[5]

Petitioners also contend that "the religious activity of the associates [i.e., employees] [would be burdened by] the detailed record-keeping requirements of

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[5] I.R.C. § 170(b)(1) provides that contributions to charitable and religious organizations are deductible only up to fifty percent of an individual's adjusted gross income. As a result, a taxpayer who devotes all of his secular income to a religious order is still liable to income tax on a portion of it. Fogarty v. United States, 53 U.S.L.W. 2305 (No. 54-82T, Ct. Cl. 11/19/84) (rejecting argument that income of Jesuit professor at public university is attributable to tax-exempt religious order to which it was donated).

Section 11 of the Fair Labor Standards Act (29 U.S.C. § 211), which would require the associates to maintain and keep records of their activities and to have such available for government inspection." (Pet. Br. 30-31).

The petitioners have misapprehended the statute. Section 11 of the FLSA requires the employer, not employees, to make and preserve the records as to wages and hours necessary to implement the Act. It imposes no burden on employees, let alone a substantial one.

Moreover, the clearly secular nature of the activities at issue assure that required recordkeeping will not impinge on any legitimate interest in religious autonomy.

Third, the government's interest in protecting the health and well-being of workers through the minimum wage laws is obviously sufficient.[6] Indeed, even if one assumes the existence of a genuine burden on

religious conscience, the religious exemption should be rejected because the effect on third persons (employees and competitors) would be severe, and because religious exemptions would threaten the integrity of the minimum wage structure.[7] Jacobson v.

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[6] See, e.g., S.Rep. No. 1487, 89th Cong., 2nd Sess., reprinted in U.S. Code Cong. & Ad. News 3002, 3003 (1966).

[7] Faced with a claimed religious exemption from the federal minimum wage laws in Donovan v. Shenandoah Baptist Church, the District Court closely tracked this Court's analysis in United States v. Lee:

> While accommodation should be sought whenever possible, there is a point at which accommodation would 'radically restrict the operating latitude of the legislature.' Braunfeld v. Brown, 366 U.S. 599, 606 (1961). Were every organization either affiliated with or operated by a religious association granted an exemption from the Act's minimum wage provisions, an unduly large segment of the American work force would be left without the benefit and protection of the Act. Courts would be called upon to adjudicate the free exercise claims of a multitude of organizations, each in their own way asserting religious tenets that would somehow be violated by enforcement of the Act. The minimum wage requirements imposed on employees must, therefore, be applied uniformly to all, except as Congress in its wisdom and discretion provides otherwise.

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Massachusetts, supra, Prince v. Massachusetts, supra, and United States v. Lee, supra, make clear that social welfare legislation cannot be avoided through resort to the Free Exercise Clause where third parties would suffer or the goverment program would be endangered.[8]

II. APPLICATION OF THE FAIR LABOR STANDARDS ACT TO RELIGIOUS ORGANIZATIONS ENGAGED IN SECULAR COMMERCIAL ACTIVITIES DOES NOT VIOLATE THE ESTABLISHMENT CLAUSE.

A religious claimant, whether individual or institutional, may of course argue that the Establishment Clause prevents application of a statute because the statute will result

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573 F.Supp. at 327. Compare United States v. Lee, 455 U.S. at 259-60.

[8] There may, of course, be settings in which the application of social welfare legislation to religious -- as opposed to secular -- activity would pose a serious threat to Free Exercise values such as church autonomy. Given the lack of such a threat under the facts of this case, this is an inappropriate vehicle to consider whether, for example, minimum wage legislation could be applied to clergy performing religious functions.

in impermissible entanglement between church and state and therefore threaten religious autonomy. The petitioners in this case, however, operate a wide variety of businesses, including a service station, a restaurant, a freight carrier, a hog farm, and a telegraph company. The businesses "owned or operated by the Foundation are ordinary commercial businesses which offer goods and services to the general public in competition with for-profit businesses," the District Court was careful to note. 567 F.Supp. 556, 561.

The federal appellate courts have consistently held that the Establishment Clause does not shield religiously-affiliated organizations engaged in predominantly secular activities from social welfare laws.[9] These decisions, focusing on the

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[9] These cases include St. Elizabeth Hopsital v. NLRB, 715 F.2d 1193, 1196-97 (7th Cir. 1983) (hospital open to general public), St. Elizabeth Community Hospital
[cont'd. on next pg]

predominantly secular nature of the activities of religiously-affiliated institutions such as hospitals and hotels, embody a common-sense tacit recognition that there is a significant qualitative difference between rights of religious autonomy asserted by an individual or church engaged in core religious activity, and those same rights asserted by a religiously-affiliated organization engaged in secular activity or commerce. These cases accord entirely with this Court's statement of general principle in United States v. Lee: "When followers of a particular sect enter into commercial activity as a matter of choice, the limits

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v. NLRB, 708 F.2d 1436, 1442 (9th Cir. 1983) (hospital open to general public), Tressler Lutheran Home v. NLRB, 677 F.2d 302, 305-07 (3d Cir. 1982) (nursing home open to general public), NLRB v. St. Louis Christian Home, 663 F.2d 60, 63-65 (8th Cir. 1981) (government-funded home for battered children), and NLRB v. World Evangelism, Inc., 656 F.2d 1349, 1353-54 (9th Cir. 1981) (office complex, hotels and restaurant open to public).

they accept on their own conduct as a matter of conscience and faith are not to be superimposed on the statutory schemes which are binding on others in that activity." 455 U.S. at 261.

Since the Alamo Foundation has elected to function in the secular marketplace, its claim to religious autonomy premised on the Establishment Clause is at its lowest ebb.

Measured by the three tests of Lemon v. Kurtzman, 403 U.S. 602 (1971), the Alamo Foundation's claim to an Establishment Clause exemption from the federal minimum wage laws should fail.

Plainly the Fair Labor Standards Act has a secular purpose, and just as plainly the primary effect of the FLSA is neither to advance nor inhibit religion.

Nor does the FLSA create excessive government entanglement with religion. The petitioners contend otherwise, relying on the

record-keeping requirements of § 211. (Pet. Br. 39.) The answer to this charge is provided by the well-reasoned opinion of the District Court in Donovan v. Shenandoah Baptist Church:

> That the Government requires covered employers to maintain adequate payroll records, and that it may require an employer to periodically make available such records for examination and inspection, does not mean that defendant's religious affairs will be subject to ongoing surveillance or that the Government will become enmeshed in its religious affairs. Indeed, as the FLSA's minimum wage provisions are concerned solely with how much non-exempt employees are paid, there would be no occasion for governmental involvement in defendant's doctrinal or other religious concerns. Investigations, properly conducted in accordance with 29 U.S.C. § 211, require no significant disruptions of defendant's religious or educational activities.

573 F.Supp. at 325. See Committee for Public Education v. Regan, 444 U.S. 646, 660-61 (1980).

The problem of entanglement in this case

is of a very different order than that posed by NLRB v. Catholic Bishop of Chicago, 440 U.S. 490 (1979). There, the Court held that, given the serious question of excessive entanglement raised by the assertion of Labor Board jurisdiction over parochial schools and the extension of collective bargaining under the continuing supervision of the NLRB to teachers in those schools, it was necessary to identify an "affirmative intention of the Congress, clearly expressed," before finding that jurisdiction was statutorily warranted. 440 U.S. at 501. But that case was marked by this Court's recognition of "the critical and unique role of the teacher in fulfilling the mission of a church-operated school," as well as the greater and ongoing role of the Board in defining the content of the ongoing teacher/school relationship. 440 U.S. at 501, 502-03. Manifestly, no such sensitive considerations

are present in this case, and the Court should not utilize the same approach regarding legislative intent.

Indeed, to exempt religiously-affiliated employers engaged in commercial or other secular activities from the federal minimum wage laws would be an unwarranted discrimination in favor of religion. Of primary importance to the Court in Walz v. Tax Commission, 397 U.S. 664 (1970), upholding the constitutionality of a property tax exemption for churches, was the fact that the state "had not singled out ... churches as such," but rather had granted exemption to a broad range of nonprofit organizations. More recently, in Mueller v. Allen, 463 U.S. 721 (1983), the Court found dispositive that a tax deduction alleged to have the unconstitutional effect of advancing religion was available to parents of children in all schools, not just parochial schools. 463

U.S. at 73[illegible], distinguishing Committee for Public Education v. Nyquist, 413 U.S. 756 (1973). The lower courts have implemented this teaching. See, e.g., Forest Hills Early Learning Center, Inc., v. Lukhard, 728 F.2d 230 (4th Cir. 1984), holding a state's exemption of religiously-affiliated child care centers from its health and safety laws violative of the Establshment Clause.

CONCLUSION

For the foregoing reasons, the judgment,

as modified by the Court of Appeals, should be affirmed.

Respectfully submitted,

GILBERT GAYNOR
ACLU Foundation of
Southern California
633 South Shatto Place
Los Angeles, CA 90005
(213) 487-1720

BURT NEUBORNE,
Counsel of Record
CHARLES S. SIMS
American Civil Liberties
Union Foundation
132 West 43rd Street
New York, New York 10036
(212) 944-9800

Attorneys for Amicus Curiae

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In the Supreme Court of the United States

OCTOBER TERM, 1984

TONY AND SUSAN ALAMO FOUNDATION, ET AL., PETITIONERS

v.

RAYMOND J. DONOVAN, SECRETARY OF LABOR

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE RESPONDENT

REX E. LEE
Solicitor General

CHARLES FRIED
Special Assistant to the Attorney General

MICHAEL W. MCCONNELL
Assistant to the Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

FRANCIS X. LILLY
Solicitor of Labor

KAREN I. WARD
Associate Solicitor

CAROL A. DE DEO
Counsel for Appellate Litigation

SANDRA LORD
BARBARA J. JOHNSON
Attorneys
Department of Labor
Washington, D.C. 20210

QUESTIONS PRESENTED

1. Whether the minimum wage, overtime, and record-keeping requirements of the Fair Labor Standards Act of 1938, 29 U.S.C. 201 *et seq.*, apply to work in commercial businesses owned and operated by a religious organization, performed by persons who, while deeming themselves to be volunteers, in fact provide their services to the organization in return for lodging, food, and other in-kind benefits.

2. Whether application of the Act to the commercial operations of a religious organization under these circumstances is constitutional.

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BRIEF FOR THE RESPONDENT

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 48-67) is reported at 722 F.2d 397. The memorandum and order of the district court (Pet. App. 1-40) is reported at 567 F. Supp. 556. A subsequent order modifying the original order of the district court (Pet. App. 42-45) is not reported.

JURISDICTION

The judgment of the court of appeals (Pet. App. 47) was entered on December 5, 1983. Petitions for rehearing were denied on March 1, 1984 (Pet. App. 68). The petition for a writ of certiorari was filed on May 25, 1984, and was granted on October 15, 1984. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTE AND REGULATIONS INVOLVED

The relevant statutory and regulatory provisions are reprinted at Pet. App. 69-85.

STATEMENT

1. a. The Fair Labor Standards Act of 1938 (FLSA), 29 U.S.C. 201 *et seq.*, enacted pursuant to Congress's power under the Commerce Clause, requires payment by

covered employers to covered employees of a statutorily-prescribed minimum wage (now $3.35) for all hours worked, and premium payment for overtime (hours worked in excess of 40 per week). 29 U.S.C. 206, 207. In addition, the statute requires covered employers to maintain and provide to the Administrator records concerning all employees and their wages, hours, and other conditions of employment. 29 U.S.C. 211(c).[1]

Employment may be covered under the Act pursuant to either "individual" or "enterprise" coverage. Under "individual" coverage, an employee is subject to the protections of the Act if he works directly in interstate commerce or in the production of goods for interstate commerce. Under "enterprise" coverage, an employee is protected if he is employed in an enterprise engaged in interstate commerce or in the production of goods for interstate commerce, whether or not he is personally so engaged. An "enterprise engaged in commerce" is defined as an "enterprise" (see 29 U.S.C. 203(r) and pages 16-17, *infra*) that has employees engaged in commerce, in the production of goods for commerce, or in handling, selling, or otherwise working on goods or materials that have been moved in or produced for interstate commerce, and that has a gross volume of sales made or business done in excess of a specific dollar volume, now $250,000. See 29 U.S.C. 203(j) and (s).[2]

"Enterprise" coverage under the Fair Labor Standards Act came into being with the 1961 amendments, which substantially broadened the scope of the Act. See *Brennan* v. *Arnheim & Neely, Inc.*, 410 U.S. 512, 516-517 (1973); *Maryland* v. *Wirtz*, 392 U.S. 183, 185-186 (1968). In 1966 Congress further broadened the scope of the Act's coverage when it amended the enterprise provisions to include, inter alia, schools and hospitals, whether

[1] For further detail on the recordkeeping requirements, see 29 C.F.R. 516.

[2] In 1977, Congress raised the annual dollar threshold for enterprises composed exclusively of retail or service establishments to $[illegible]2,550 (effective Dec. 31, 1981). Certain enterprises need not meet the dollar volume test. See 29 U.S.C. 203(s)(3)-(6).

or not operated for profit. See *Maryland* v. *Wirtz*, 392 U.S. at 186-187. See H.R. Rep. 1366, 89th Cong., 2d Sess. 16-17, 37 (1966).

Section 13 of the Act, 29 U.S.C. 213, sets forth a number of exemptions from minimum wage and overtime requirements for certain classes and categories of employee. The requirements do not apply, for example, to bona fide executives, administrators, or professionals (29 U.S.C. 213(a)(1)), to certain retail or service establishment employees (29 U.S.C. 213(a)(2)), or to employees in seasonal recreational establishments (29 U.S.C. 213(a)(3)). Specific exceptions and exemptions such as these have been frequently modified by Congress. In general, the coverage of the Act has been interpreted broadly by the courts, and the exceptions to coverage narrowly. *Arnold* v. *Ben Kanowsky, Inc.*, 361 U.S. 388, 392 (1960); *Powell* v. *United States Cartridge Co.*, 339 U.S. 497, 516-517 (1950).

Prior to the introduction of enterprise coverage in 1961, the only employees who were covered under the Act were those directly engaged in interstate commerce. Thus, most employees of religious or other non-profit organizations would not have been covered. But see *Mitchell* v. *Pilgrim Holiness Church Corp.*, 210 F.2d 879 (7th Cir.), cert. denied, 347 U.S. 1013 (1954). Under the enterprise coverage concept, however, all of the employees of an "enterprise" are covered. Since the definition of "enterprise" is limited to an organization's activities engaged in for a common business purpose (29 U.S.C. 203(r)), it follows, however, that not all employees of a non-profit organization that is engaged in interstate commerce are necessarily covered. See S. Rep. 145, 87th Cong., 1st Sess. 41 (1961). Departmental regulations provide (29 C.F.R. 779.214 (citation omitted)):

> Activities of eleemosynary, religious, or educational organization[s] may be performed for a business purpose. Thus, where such organizations engage in ordinary commercial activities, such as operating a printing and publishing plant, the business activi-

ties will be treated under the Act the same as when they are performed by the ordinary business enterprise. However, the nonprofit educational, religious, and eleemosynary activities will not be included in the enterprise unless they are [in connection with schools, hospitals, or like activities, as specifically covered by 29 U.S.C. 203(r)(1)].

While the literal language of the Act is exceedingly broad, the legislative history indicates and this Court has made clear that not every worker is an "employee." This Court stated in *Walling* v. *Portland Terminal Co.*, 330 U.S. 148, 152 (1947), that the term "employee" does not extend to persons "who, without any express or implied compensation agreement, might work for their own advantage on the premises of another." *Portland Terminal* concerned the status of railroad brakeman trainees who received a practical course of instruction lasting seven or eight days, learning the skill by observation and by doing actual work under close supervision, "without promise or expectation of compensation." The work did not economically benefit Portland Terminal. 330 U.S. at 149, 152-153. The Court held that such persons are not employees under the Act.

The Department of Labor has applied this concept to other persons who work without any compensation or expectation of compensation, under circumstances indicating that they are working solely for their own purposes or objectives. In determining whether individuals have truly volunteered their services, without any expectation that they will be compensated, the Department considers a variety of factors, including the receipt of any benefits from those for whom the services are performed, whether the activity occupies less than the full-time energies of the individual, and whether the services performed are humanitarian, public welfare, or religious activities that have typically been associated with the work of volunteers.[3]

[3] Illustrative of the volunteer services recognized as such by the Department are those of individuals who, without receipt or contemplation of pay and usually on a part-time basis, help to minister to the comfort of the sick, elderly, indigent, infirm, or handicapped, or who assist charitable, educational or religious organizations by driving vehicles or folding bandages for the Red Cross; working with retarded or handicapped children or disadvantaged youth, or helping in youth programs; providing nursery school and child care assistance for needy working mothers; soliciting contributions or participating in benefit programs for such organizations; and volunteering other services needed to carry out their charitable, educational, or religious programs. See, *e.g.*, *Opinion Letter No. 927*, [Wages-Hours] Lab. L. Rep. (CCH) ¶ 30,939 (May 29, 1968); *Opinion Letter No. 249*, [Wages-Hours] Lab. L. Rep. (CCH) ¶ 30,843 (Apr. 30, 1964); *Opinion Letter No. 626*, [Wages-Hours] Lab. L. Rep. (CCH) ¶ 30,616 (June 28, 1967); *Opinion Letter No. 687*, [Wages-Hours] Lab. L. Rep. (CCH) ¶ 30,681 (Nov. 7, 1967); *Opinion Letter No. 476*, [Wages-Hours] Lab. L. Rep. (CCH) ¶ 30,997.15 (May 16, 1966).

The Department has been extremely reluctant, on the other hand, to excuse employers from their obligations under the Act where regular employees "volunteer" for extra duties in addition to their normal assignments. See Opinion Letter No. 626, *supra*. Such arrangements are frequently conditioned by an implied economic sanction for failing to "volunteer." Thus, where the relationship

In this connection, an opinion letter issued by the Department's Wage Hour Administrator stated that "persons such as nuns, priests, lay brothers, ministers, deacons, and other members of religious orders who serve pursuant to their religious obligations in preschools, schools, hospitals, or other institutions operated by their church or religious order are not considered to be employees." *Opinion Letter No. 1240*, [Wages-Hours] Lab. L. Rep. (CCH) ¶ 30,826 (Dec. 27, 1972). This was consistent with concerns expressed by certain members of Congress in 1966, when the activities of non-profit schools and hospitals were included within the Act's enterprise coverage. At that time, some members stated that, notwithstanding the change, members of religious orders teaching or caring for the sick would not be considered employees under the Act. See 112 Cong. Rec. 11371 (1966) (Rep. Burton); *ibid.* (Rep. Collier).

2. Petitioner, the Tony and Susan Alamo Foundation, is a non-profit religious organization incorporated under the laws of California. The sole members of the corporation are identified as directors Tony Alamo, Susan Alamo (until her death), and Phyllis Gromousky (Pet. App. 6; Pet. Br. App. 7). The "primary purposes" of the Foundation, according to its Articles of Incorporation (Pet. Br. App. 1-10), are to "establish, conduct and maintain an Evangelistic Church" and to undertake certain related activities, including caring for the needy, conducting religious services, teaching classes in the Holy Bible, and doing "those things needful for the promotion of Christian faith, virtue, and charity" (*id.* at 2).

In addition to its evangelistic endeavors, the Foundation operates numerous commercial ventures in four states (Pet. App. 1-5, 49, 51-52). These include gasoline stations, a vehicle repair facility, clothing stores, a restaurant, a telegraph office, a grocery store, establishments that buy and sell personal property, candy and record stores, a motel, a nursery, a building materials store, construction companies, a feed and farm supply company, a hog farm, and a company that lays concrete foundations (*id.* at 2-5). Other Foundation businesses provide services to these various retail and service establishments. For example, Hartford Advertising has provided advertising services to the commercial ventures (Hydell Dep. at 13) and sewing rooms have manufactured clothing sold in Foundation stores (J.A. 156-157, 175, 195). In addition, the various businesses frequently supply each other with goods and services, including meals for employees at job sites (J.A. 170, 218-219) and tools and parts for gasoline stations (Baxter Dep. at 55).

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between an individual and an organization contemplates the payment of compensation for services performed by the individual, the Department will find that services are "voluntarily" performed by that individual only where these services are clearly unrelated to his routine functions. *Ibid.*

The district court found as a fact (Pet. App. 5) that "[t]he businesses owned or operated by the Foundation are ordinary commercial businesses which offer goods and services to the general public in competition with for-profit businesses." The annual dollar volume of sales from the Foundation's businesses in each of the years 1976 through 1979 exceeded the statutory coverage minimum of $250,000 (*ibid.*). Petitioners have conceded (J.A. 47) that the Foundation's businesses operate in interstate commerce.

Management of the Foundation businesses during the period at issue (1975-1979) was highly centralized. Most significant decisions were made by petitioner Tony Alamo personally. Alamo received a daily accounting from each of the businesses; he approved all financial transactions and solved all but the most routine problems (J.A. 143, 188, 194, 197-198). For example, one witness testified that none of the workers was in charge of the service station run by the Foundation; questions "concerning credits or concerning whether or not to order another consignment of gasoline" were submitted to Tony Alamo on a daily basis (J.A. 194). As another former worker testified, every request for money was submitted to Alamo on a daily "finance list." "He will okay whichever expense that he felt was right or whatever; and then, the finance list will come back over the telephone; and by the morning, we knew if the money we put on the finance list was okay to get." J.A. 188.

During this period, the Foundation businesses were staffed primarily by some 300 "associates," who ascribed to the Foundation's religious tenets, lived in Foundation housing, and depended upon the Foundation for most or all of their lodging, food, clothing, and medical benefits.[4]

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[4] The Foundation occasionally hired "outside workers," who were not associated with the Foundation, to perform services that the associates "didn't know anything about" (J.A. 109). Outside workers received cash wages and were "not necessarily [retained] until the job was done, but until the brothers or sisters [i.e., associates] could get an idea on how to do the job" (J.A. 136, 154). See Pet. App. 29-34.

The associates did not receive ordinary cash wages for their work in the Foundation businesses and the Foundation did not keep contemporaneous records of their hours worked or jobs performed.

Evidence regarding the number of hours worked by the associates varied, but, as the district court noted (Pet. App. 9), witnesses "testified that they were required to work as long as 12 to 15 hours per day, 6 or 7 days per week." The associate in charge of scheduling for the restaurant and sewing room testified that the regular waitresses at the restaurant worked "from twelve to sixteen hours a day," seven days a week, with the only time off for attendance at Sunday services (J.A. 120-121). Regular hours in the sewing room were 8:00 or 8:30 a.m. until 8:00 p.m., and the sewers would "frequently" work "three or four days straight in a row without any sleep or even a break" (J.A. 121-122). See also J.A. 107-108 (construction crews would work from 6:30 a.m. until sundown on outside projects and from after dinner until 11:00 p.m. to 2:00 a.m. on Foundation projects, six days per week); J.A. 139-141 (drivers' and clothing store workers' regular hours were 9:00 a.m. to midnight, at least six days per week). The sewing room went on eight-hour shifts at one point "because there was something going on with the labor department" (J.A. 158).

Associates typically held a wide variety of positions in the Foundation's businesses. Associates tended to change jobs often (J.A. 133), at the direction of Tony Alamo or, indirectly, though instructions by other "brothers and sisters" (J.A. 108, 132, 140, 159, 193-194, 198, 200, 201). They were employed almost interchangeably in the various businesses. For example, within one and one half years, one associate worked at two clothing stores and two service stations in two different communities (J.A. 191-202). See also J.A. 132-136. In addition to serving fulltime positions, associates worked in other positions as the need arose (J.A. 59-60, 96, 199). Thus, associates often worked a full day at one establishment only to work several hours more at another—sometimes late into the night (J.A. 107-108, 150-151, 161).

Some associates obtained outside employment. These individuals endorsed their paychecks to the Foundation (Pet. App. 8, 10; J.A. 52, 207). Some of them, involved in various aspects of the construction trade, contracted with outside parties to perform specific services (Pet. App. 8). Payment for the construction work was generally made by the clients to the crew leader, who would remit the entire amount, sometimes deducting for costs incurred, to the Foundation (J.A. 64-65, 131-132, 134-135, 186).

In addition to their commercial labors, associates generally performed religious functions, such as witnessing, sharing the Gospel, or praying with others (J.A. 49, 73). However, a former associate testified (J.A. 178) that, although "[t]he original emphasis of the Foundation when it started was the witnessing, * * * as time went on and the Foundation grew and there were more and more businesses, there was less and less witnessing * * *. [I]t became more and more work as time went on." To similar effect, see J.A. 150, 165.

Associates did not expect or receive cash wages for their work.[5] However, as the district court found (Pet. App. 8), "they did expect the Foundation to provide them food, shelter, clothing, transportation, and medical benefits." As Tony Alamo has acknowledged (J.A. 92-93), "numerous" families were "dependent" upon these benefits provided by the Foundation for their subsistence. This dependency upon the Foundation's in-kind benefits was confirmed by many witnesses. See, *e.g.*, J.A. 61, 74, 213, 216-220. Testimony by one representative associate (J.A. 78) is typical:

> Q. And, of course, you do expect the benefits?
>
> A. Well, the benefits are just a matter of—of course[.] [W]e went out and we worked for them.

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[5] In late 1977 or early 1978, however, some associates started to receive small sums in cash—usually $5 per week. J.A. 160; see *id.* at 148, 217.

See also J.A. 64-65. Not only did the associates expect to receive these benefits in return for their work, but the level of benefits received appeared to be dependent, to some degree, on the work performed. For example, a salesman at the Foundation clothing stores received a percentage commission on each sale, to be credited toward purchases at other Foundation stores (J.A. 146, 153). Associates employed in other Foundation businesses would be fined for instances of poor performance, such as spilling gasoline on the ground, breaking merchandise, or saying the wrong thing to a customer (J.A. 148-149). Associates were forbidden to obtain food from Foundation sources when they were not working—even when the absence was caused by inclement weather or the need to care for sick children (J.A. 218-219).

Moreover, some former associates believed, erroneously, that they had a legal interest in the Foundation's assets (Pet. App. 8). As one former associate expressed it (J.A. 189):

> We all understood that the foundation became rich and so that we were all rich. We were all part of the foundation.
>
> It came to my understanding just before I left * * * the foundation—that legally, we were—we didn't have no rights whatsoever belonging to the foundation and that the real owners legally were only Tony and Susan Alamo.

Another stated that she "was led to believe * * * that we were shareholders in their non-profit California corporation * * *. But, in reality, you know, when I got out I realized that the only share we had was to work for and to maintain and to live in Tony's and Sue's properties and businesses" (J.A. 178-179). See also J.A. 75-76.

The associates who testified at trial stated, without exception, that they viewed the work they performed for the Foundation as "volunteering" (Pet. App. 7). However, virtually all of the associates in fact worked (J.A. 109-110); as one associate stated (J.A. 76), "if you want to eat, you've got to work." Other evidence suggested that pressure was brought to bear to prevent associates from

leaving the Foundation. One former associate testified (J.A. 181) that "I could not have left the Foundation on my own. I was afraid to." Another explained (J.A. 129) that she and her family had left the Foundation at three o'clock in the morning "[b]ecause we were afraid of physical violence, physical harm to us." See also J.A. 168-169.

3. On December 19, 1977, respondent, the Secretary of Labor, filed an action against petitioners in the United States District Court for the Western District of Arkansas. The Secretary alleged that petitioners had violated the minimum wage, overtime, and recordkeeping provisions of the Act, 29 U.S.C. 206(b), 207(a), 211(c), 215(a)(2) and (5), with respect to more than 300 associates.[6] On December 10, 1982, following a bench trial, the district court issued a memorandum and order holding that petitioners had violated the Act's recordkeeping, minimum wage, and overtime provisions, and ordered injunctive and restitutionary relief. The district court found that the Foundation's businesses "operated * * * under common control for common business purposes * * * in competition with other commercial business" and therefore determined that they constituted a single "enterprise" subject to the requirements of the Act (Pet. App. 35). See 29 U.S.C. 203(r). The court also found that the associates were "totally dependent upon the Foundation" for their subsistence (Pet. App. 10) and concluded that, as a matter of economic reality, the associates expected the Foundation to support them (*id.* at 37):

> The associates contemplated they would be fed, clothed, sheltered and provided other forms of bene-

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[6] The Secretary also charged petitioners with failing to compensate certain "outside workers," Foundation employees who were not associates (see note 4, *supra*), at the proper overtime rate pursuant to 29 U.S.C. 207(a) (Pet. App. 29, 49). The district court made specific factual findings concerning the hours worked by each named employee (*id.* at 30-34), which, with one exception (*id.* at 66-67), the court of appeals upheld (*id.* at 49). Petitioners have not sought review of this portion of the case.

> fits as a result of their work at the Foundation's commercial businesses. Such benefits are simply wages in another form.

In addition, the court noted that several former associates expected to share in the profits of the Foundation's commercial ventures (*id.* at 8). Accordingly, the court ruled that the associates were petitioners' employees within the meaning of the Act, 29 U.S.C. 203(e)(1), 203(g) (Pet. App. 37).

Finally, the district court rejected petitioners' constitutional claims. Petitioners had maintained that application of the Act to the Foundation businesses violated its associates' rights to freely exercise their religion and fostered excessive government entanglement with the Foundation's religious mission. The court held that application of the Act to the commercial activities of a non-profit religious organization is rationally related to the statutory goal of protecting competitors against unfair competition; that there is no proof of discriminatory prosecution by the Secretary; and that application of the Act violates neither the Free Exercise Clause nor the Establishment Clause of the First Amendment. Pet. App. 35-36.[7]

4. The court of appeals affirmed the district court's holding as to liability, but vacated and remanded as to the appropriate remedy (Pet. App. 66).[8] The court of

[7] As remedy, the court ordered that all former associates and "all persons * * * who have worked in [specified] businesses of the Foundation" be advised of their eligibility to submit a claim to the Secretary (Pet. App. 44). The court instructed the Secretary to consider all claims and submit to the Court proposed findings "of back wages due each claimant * * * less applicable benefits" that had been provided by the Foundation (*ibid.*). The Secretary appealed the remedial portions of the order.

[8] The court of appeals rejected the district court's requirement that associates initiate backpay proceedings (Pet. App. 61-63, 65). Instead, the court of appeals held, because petitioners "failed to provide [the records detailing hours worked by employees] which [they are] obliged to preserve," the district court must employ "'the most accurate basis possible under the circumstances'" for calculating back wages due (*id.* at 65, quoting *Anderson* v. *Mt. Clemens Pottery Co.*, 328 U.S. 680, 688 (1946)). Therefore, the court of appeals remanded the case to the district court "for determination of the amounts of wages owing, such determination to be based either upon the present record or as supplemented by such additional evidence as the District Court may afford the parties an opportunity to offer" (Pet. App. 66). By an unreported memorandum and order dated September 10, 1984, the district court identified specific associates due back wages and ordered the Secretary to submit a proposed judgment. Prior to entry of final judgment, and following this Court's writ of certiorari, the district court "administratively terminate[d]" the action pending this Court's decision.

appeals agreed that the associates, who "expect[ed] to receive * * * [the] benefits of lodging, food, transportation, and medical care," were Foundation employees (*id.* at 50, 53).

The court also held that application of the Act to the Foundation employees did not violate the Establishment Clause because the Act is "secular social legislation of an economic character" (Pet. App. 56), which neither advances nor inhibits religious practice (*id.* at 59-60) and does not foster excessive government entanglement with religion (*id.* at 56-59). The court distinguished this Court's holding in *NLRB* v. *Catholic Bishop*, 440 U.S. 490 (1979), finding that application of the FLSA to the Foundation was far less intrusive than application of the NLRA to teachers in religious schools.

Application of the FLSA here did not violate the Free Exercise Clause, the court concluded, because "enforcement of wage and hour provisions cannot possibly have any direct impact on [petitioners'] freedom to worship and evangelize as they please" (Pet. App. 60) and because the indirect impact was solely financial (*id.* at 60-61). "[L]egislation otherwise legitimate does not violate the Free Exercise Clause merely because financial detriment results" (*id.* at 61). In short, the court stated, "[t]here is surely no constitutional right, under the religion clauses of the First Amendment, to pay substandard wages" (*id.* at 59).

SUMMARY OF ARGUMENT

The Court's attention is drawn in this case to a matter which Congress has specifically considered and decided—

the status of religious and other non-profit organizations under the Fair Labor Standards Act. The arguments made by petitioners in the guise of statutory and constitutional construction are in fact issues of policy. The lines Congress has drawn, between the commercial and the non-commercial activities of non-profit organizations and between persons who labor with the expectation of compensation (whether cash or in-kind) and those who work as non-paid volunteers for their own purposes, strike an appropriate balance between the competing interests. We submit that Congress's resolution of these questions, although perhaps not the only conceivable resolution, is well within its range of discretion under the Constitution.

It must be emphasized at the outset that this enforcement proceeding applies solely to work performed in the commercial businesses of the Foundation. The case does not touch in any way upon the Foundation's core religious functions of worship, liturgy, doctrine, prayer, preaching, or internal organization, in which government may play no part short of protecting against threats to public safety, order, or other fundamental interests. Nor does it involve the difficult middle ground of charitable, educational, or similar activities that may be viewed as religious by the religious organization, but have significant secular dimensions from the viewpoint of government. This case, by contrast, involves relatively well-settled principles applied to the commercial sector. It is here that petitioners' privileges under the Religion Clauses are at their lowest ebb.

The statutory arguments of petitioners are simply stated and easily answered. They contend that their businesses, though concededly engaged in interstate commerce (J.A. 47), do not fall within the definition of "enterprise" because, as a tax-exempt religious organization, the Foundation lacks a common "business purpose"; and they contend, purely on the basis of testimony characterizing their associates as "volunteers" who do not "expect" "wages" or "compensation," that the associates are not "employees" under the Act. However, Congress explicitly understood and intended that the commercial operations

of tax-exempt, non-profit organizations be covered within the definition of "enterprise." H.R. Rep. 75, 87th Cong., 1st Sess. 8 (1961); S. Rep. 145, 87th Cong., 1st Sess. 41 (1961). And the status of apparent employees cannot be determined solely upon characterizations agreed upon by employer and employee, lest the protections of the Act be bargained away. See *Brooklyn Savings Bank* v. *O'Neil*, 324 U.S. 697, 707 (1945). Here, the district court found, and the court of appeals agreed, that the Alamo associates in fact expected substantial in-kind benefits in exchange for their labors. That finding is sufficient to establish "employee" status under the Act in this context.

Petitioners' constitutional contentions are more difficult to state. They suggest that, in some way, imposition of a minimum wage upon the associates would violate their Free Exercise rights. However, they fail to establish—or even allege—that acceptance of compensation at statutory levels would violate the religious tenets of the associates. The associates in fact accept substantial in-kind compensation, own property, in some cases earn wages, and state no objection to an above-subsistence standard of living. In short, there is no Free Exercise violation because there is no claim that application of the Act will require the associates to take any action that would violate their beliefs, or to refrain from any action mandated by their beliefs.

Petitioners' Establishment Clause argument is deficient for essentially the same reasons that are fatal to their statutory argument: the Act affects only the Foundation's commercial operations and does not interfere with, or intrude into, matters of faith. Insofar as a religious organization chooses to enter the secular marketplace in competition with others, it is subject to secular regulation on neutral terms.

ARGUMENT

I. THE COMMERCIAL OPERATIONS OF PETITIONER ARE SUBJECT TO THE REQUIREMENTS OF THE FAIR LABOR STANDARDS ACT

A. The Commercial Operations Of A Non-Profit Religious Organization Are Subject To "Enterprise" Coverage Under The Act

Petitioners contend (Br. 28) that the Foundation businesses "do not fall within the meaning of the word 'enterprise' as defined by Section 3(r) of the Fair Labor Standards Act (29 U.S.C. § 203(r)) in that [the Foundation] has not performed related activities for a common business purpose but has operated the aforesaid activities exclusively for religious purposes."[9] In support of this argument, petitioners note (Br. 26 (emphasis deleted)) that the Foundation has secured an exemption from taxation under Section 501(c)(3) of the Internal Revenue Code as "a corporation organized and operated exclusively for religious purposes," and (Pet. Br. 27) that the district court found that the Foundation's "evangelistic work" has "provided spiritual and moral assistance to many people who lacked direction or purpose in their lives" (quoting Pet. App. 6-7).

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[9] It is undisputed that the Foundation businesses operate in interstate commerce (J.A. 47) and that their annual volume of business exceeds $250,000 (PX 1; see Pet. App. 5). It is also clear that the Foundation's commercial ventures are "related activities" under "unified operation or common control." The various businesses are highly interdependent, providing each other with supplies and services; associates were freely interchanged among the various businesses; and management was highly centralized, with most decisions made by petitioner Tony Alamo personally. See pages 6-8, *supra*. Such "auxiliary activities" (H.R. Rep. 75, 87th Cong., 1st Sess. 8 (1961); S. Rep. 145, 87th Cong., 1st Sess. 41 (1961)) are deemed related and for a common purpose because they are "operational[ly] interdependen[t]." *Brennan* v. *Veterans Cleaning Service, Inc.*, 482 F.2d 1362, 1367 (5th Cir. 1973); accord, *Donovan* v. *Easton Land & Development, Inc.*, 723 F.2d 1549, 1551 (11th Cir. 1984).

However, qualification for a tax exemption as a nonprofit religious organization does not mean that commercial activities undertaken by the organization do not have a "common business purpose" within the meaning of the Fair Labor Standards Act.

This enforcement proceeding applies solely to work performed in the commercial businesses of the Foundation. It does not apply to the Foundation's religious or charitable work, or to any work performed internally for the benefit of the Foundation's uncovered activities rather than in commerce. The district court specifically held (Pet. App. 36 (emphasis added)) that "[t]he people who worked *in the Foundation's commercial businesses* • • • are 'employees' of the [petitioners] within the meaning of the Act," and provisionally excluded from its remedy (*id.* at 38-39) all work by associates in a "non-commercial" part of the Foundation's activities or in an "exempt" activity as defined by 29 U.S.C. 213(a), as well as all work for outside employers. See also Pet. App. 9-10.

As to petitioners' commercial activities, the district court held (Pet. App. 35): "Even though the Foundation is incorporated as a nonprofit religious organization, the identified businesses are engaged in ordinary commercial activities in competition with other commercial businesses." The holding that the commercial businesses of the Foundation constitute an "enterprise" within the meaning of the Act is in accord with established law, and supported by the language of the Act, the Department's regulations, judicial precedent, and legislative history.

Certainly, nothing in the language of the Act supports petitioners' interpretation. An enterprise is plainly defined as "related activities performed • • • by any person or persons for a common business purpose" (29 U.S.C. 203(r)). The Act includes no special exclusion of nonprofit or religious organizations from this definition. If such organizations carry on activities for a "business purpose," they are covered. Merely because an organization may be tax-exempt does not mean that its activities have no "business purpose."

This interpretation is reflected in the Department's interpretive regulation defining "business purpose." The regulation, 29 C.F.R. 779.214, explicitly recognizes that "[a]ctivities of eleemosynary, religious, or educational organizations may be performed for a business purpose." The regulation then provides that "where such organizations engage in ordinary commercial activities, such as operating a printing and publishing plant, the business activities will be treated under the Act the same as when they are performed by the ordinary business enterprise."

This administrative interpretation of the statute is entitled to considerable weight. *Skidmore* v. *Swift & Co.*, 323 U.S. 134 (1944); see *Udall* v. *Tallman*, 380 U.S. 1, 16 (1965). Moreover, this interpretation of the Act has been uniformly upheld by the courts. *Marshall* v. *Woods Hole Oceanographic Institute*, 458 F. Supp. 709, 718 (D. Mass. 1978) (non-profit scientific research corporation has business purpose because it competes for contracts under the same terms as a commercial organization); *Marshall* v. *Elks Club of Huntington, Inc.*, 444 F. Supp. 957, 967-968 (S.D. W.Va. 1977) (restaurant run by non-profit fraternal organization has a business purpose because it is undertaken in competition with commercial businesses); *Marshall* v. *First Baptist Church*, 23 Wage & Hour Cas. (BNA) 386 (D. S.C. 1977) (day care center operated by a church has a business purpose); cf. *Mitchell* v. *Pilgrim Holiness Church Corp.*, 210 F.2d 879, 882 (7th Cir.), cert. denied, 347 U.S. 1013 (1954) (publishing and distribution plant operated by church covered by Act); *McClure* v. *Salvation Army*, 460 F.2d 553, 557 (5th Cir.), cert. denied, 409 U.S. 896 (1972) (non-profit religious organization that affects commerce is not exempt from Title VII).

Congress has specifically confronted and resolved the very question whether operations of a non-profit organization can be deemed an "enterprise." When enterprise coverage was added to the Act in 1961, Congress recog-

nized the possibility that non-profit groups might fall within the Act's definition of enterprise and indicated its intention that the Act cover the ordinary commercial activities of such organizations. See S. Rep. 1744, 86th Cong., 2d Sess. 28 (1960).

When the bill providing for enterprise coverage first was considered in 1960, Senator Goldwater proposed an amendment that would have exempted from the definition of "employer" in Section 3(d) of the Act any tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code. 106 Cong. Rec. 16703. The amendment was rejected (*id.* at 16704). The objection to the amendment, as Senator Kennedy (floor manager of the bill) stated, was that "the language of the * * * amendment goes beyond the language of the report." He explained that if an "eleemosynary institution" owned a commercial business, it "might be exempt, under the language of the * * * amendment, but not under the language of the report" (*ibid.*). Even Senator Goldwater, author of the proposed amendment, agreed that " a church which has a business operation on the side" should be subject to the Act (*id.* at 16703), and was simply concerned that the language of the Act, in the absence of a specific exemption, might be read too expansively (*ibid.*). Thus, he agreed with Senator Kennedy that "a charitable or a religious group which owned a brewery, a library, or a winery * * * would not be exempt." *Ibid.*

Petitioners' interpretation of the Act, which would exempt all activities of tax-exempt organizations from coverage, would thus go farther than even proponents of the failed amendment intended to go. There was a broad consensus in Congress that the commercial activities of non-profit and religious organizations should be covered.

The following year, when the legislation was again considered and this time enacted, Senator Curtis proposed the same amendment that Senator Goldwater had un-

successfully proposed the preceding year. Again the amendment failed. 107 Cong. Rec. 6255 (1961). In connection with the debate on the amendment, Senator McNamara, chairman of the committee that reported the bill, explained that under the enterprise provision, groups operating for charitable and religious purposes would be exempt from coverage "except as [they] engage in the printing industry or in other activities which compete with private industry to such a degree that the competition would have a very adverse effect on private industry • • •. [W]hen such [a group] comes into competition in the marketplace with private industry, we say that their work is not charitable organization work." *Ibid.* Senate and House reports on the 1961 legislation stated that the "[e]leemosynary, religious, or educational and similar activities" of non-profit organizations are "not included in the term 'enterprise'" because "[s]uch activities performed by non-profit organizations are not activities performed for common business purpose." H.R. Rep. 75, 87th Cong., 1st Sess. 8 (1961); S. Rep. 145, 87th Cong., 1st Sess. 41 (1961). Accordingly, the congressional intent is clear and unambiguous. The mere fact that petitioner Foundation is a non-profit religious organization does not make its commercial activities exempt from coverage under the Act.

Nor is there anything about the specific businesses of the Foundation that would cast doubt on the conclusion of the courts below that they are operated for business purposes. There may be instances in which commercial and religious activities are so closely related that they are difficult to distinguish, but the Foundation's businesses here are not close to the line. Gasoline stations, automobile repair shops, retail stores, restaurants, telegraph offices, motels, feed and farm supply companies, hog farms, and construction companies fall plainly within the compass of the term "business." That they generate revenue for a religious organization does not diminish their commercial nature or their impact on commerce.

Just as the evangelist does not become a mere book agent by selling the Bible (*Murdock* v. *Pennsylvania*, 319 U.S. 105, 111 (1943)) (see Pet. Br. 36), a hog farm does not become a church merely because the individuals working on it are evangelists. See *Prince* v. *Massachusetts*, 321 U.S. 158, 170-171 (1944).

Petitioners state (Br. 28) that the "Foundation's activities operate at a loss" and claim that this is "further evidence" of their non-commercial purposes. However, petitioners also acknowledge (*id.* at 28-29) that "[t]he Foundation's activities are merely means by which the associates defray their living expenses during their endeavor to promote religious doctrines and beliefs," and that the Foundation's businesses are intended "to generate income to pay expenses necessarily incurred in its efforts to spread the Gospel" (*id.* at 36). See also Pet. App. 8 (district court finding that the Foundation's commercial businesses are one of its "principal sources of income" and that it does not solicit contributions from the general public). Commercial activities, undertaken to provide money to "defray" expenses or to "generate income" are subject to enterprise coverage under the Act. In Senator Goldwater's words (106 Cong. Rec. 16703 (1960)), "a church which has a business operation on the side" is subject to the Act.

Petitioners suggest (Br. 27-28), relying on testimony by petitioner Tony Alamo, that the Foundation's businesses are non-commercial because they are used as opportunities for evangelism (as "churches in disguise") and for rehabilitation of associates who are former drug addicts or criminals. See also Pet. Br. 6-7. However, this testimony suggests at most that there may have been mixed motivations for conducting the businesses. Even assuming arguendo that the subjective motivation of the apparent employer is relevant to the question, petitioners provide no reason for concluding, contrary to the courts below, that the religious purposes so outweigh the business purposes that the Act should not apply. The court of appeals, "[u]pon careful reflection" (Pet. App.

51), concluded that the Foundation's activities had "overstepped the dividing line" between secular endeavor and sacred functions and become subject to the requirements of the Act. Observing the "extensive scope and substantial character of the foundation's commercial operations" (*ibid.*), and emphasizing that the Foundation's "businesses serve the general public, in competition with other private entrepreneurs" (*id.* at 52), the court stated (*id.* at 53 (footnote omitted)):

> Under the "economic reality" test it would be difficult to conclude that the extensive commercial enterprise operated and controlled by the foundation was nothing but a religious liturgy engaged in bringing good news to a pagan world.

More fundamentally, we are troubled by the suggestion that the Department of Labor might be required to evaluate coverage under the Act on the basis of subjective considerations of religious motivation. It would take little imagination to formulate plausible secondary religious purposes for many commercial enterprises. Indeed, one need not go much further than the court of appeals' invocation of the saying, "laborare est orare" (Pet. App. 50), to see that providing opportunities for employment and for evangelism on the job could easily be considered to be a religious purpose for virtually any commercial activity. Yet so expansive an exemption from coverage of the Act would run directly contrary to the congressional judgment that commercial activities of nonprofit organizations should be covered by the Act. The key considerations must be objective factors concerning the nature and extent of the activities in question. On the basis of such factors, no one could suggest that the courts erred in reaching the conclusion that the Foundation's businesses had a business purpose.

B. Alamo "Associates," Who Worked For In-Kind Benefits Instead Of Cash Wages, Were "Employees" —Not Volunteers—Within The Meaning of the Act

The Act broadly defines "employee" as "any individual employed by an employer," and "employ" as including

"to suffer or permit to work" (29 U.S.C. 203(e)(1), 203(g)). This definition is exceedingly broad. *United States* v. *Rosenwasser*, 323 U.S. 360, 362-363 (1945). It is not, however, without its natural limits. See *Walling* v. *Portland Terminal Co.*, 330 U.S. 148 (1947). The determination whether a particular relationship is one of "employer" to "employee" depends not on "isolated factors but rather upon the circumstances of the whole activity." *Rutherford Food Corp.* v. *McComb*, 331 U.S. 722, 730 (1947).

Relying on *Portland Terminal*, petitioners contend (Br. 20) that the Alamo associates are not "employees." They state that "a person who intends his services to be voluntary and to be rendered without compensation is not an 'employee' within the meaning of the Fair Labor Standards Act." As explained above (pages 4-6), the Department recognizes that persons who work without compensation or expectation of compensation, under circumstances that suggest that they do so for their own pleasure or objectives, are not "employees." However, we do not agree that the Foundation's associates fall within this category.

Petitioners state (Br. 20) that the associates' "efforts were not for material reward and were not given in expectation of benefits such as food and shelter." They base this assertion almost solely (Br. 13-16) on statements by representative associates regarding their expectations. For example, Bill Levy, an associate, stated (J.A. 62): "I've never expected any compensation, any wages, nor do I eve[r] expect to receive any compensation or wages for what I do, for what I do for the ministry of God."

However, the district court (Pet. App. 36-37), affirmed by the court of appeals, held that the persons who work in petitioners' commercial businesses are "employees" within the meaning of the Act. The court reached this conclusion because of the "economic reality" that "[t]he associates contemplated they would be fed, clothed, sheltered and provided other forms of benefits as a result of their work at the Foundation's commercial businesses.

Such benefits are simply wages in another form" (*id.* at 37).[10] The court of appeals, in a similar vein, stated (*id.* at 50):

> [The associates] claim to be volunteer workers and to expect no compensation. They do expect to receive (and indeed otherwise many of them could not live without resort to public assistance or crime) the aforementioned benefits of lodging, food, transportation, and medical care.

To the extent that petitioners' argument is simply that the lower courts' conclusions that the associates expected compensation were "erroneous[]" as a factual matter (Pet. Br. 19), their argument is barred by this Court's rule against reviewing the factual findings concurred in by the two lower courts. *Branti* v. *Finkel*, 445 U.S. 507, 512 n.6 (1980); *Graver Tank & Manufacturing Co.* v. *Linde Co.*, 336 U.S. 271, 275 (1949). Both courts having examined the record and concluded that, in fact, the associates expected to receive the benefits in return for working, there is no reason for this Court to reexamine that conclusion.

If petitioners are contending that, as a matter of law, the Secretary cannot "meet his burden of proof" without producing testimony from workers that they expected wages or compensation for their work (Pet. Br. 20), such an argument should be roundly rejected. Consistent with the established jurisprudence under the Act and the purposes of the statute, the courts must look to objective evidence of what the workers received and whether they expected to receive it. While not irrelevant, the workers' testimony regarding their expectations cannot be dispositive where the objectively ascertainable facts—such as actual receipt of benefits and prior knowledge that those benefits would be provided if the work were performed—are inconsistent with the workers' characterizations. In such a case, the employee's testimony

[10] The Act defines "wage" as including the cost of board, food, lodging, and similar benefits customarily furnished by the employer to the employees. 29 U.S.C. 203(m).

that he did not "expect" compensation may mean no more than that he did not demand additional compensation. For example, Donald Wylie testified that "I knew good and well I'd get no wages," and commented that "[i]nasmuch as I knew I was getting no wages, I suppose you could call me a volunteer, right." J.A. 117.

To regard characterizations of agreements made between the parties as dispositive of their obligations under the Act would undermine a major premise of the legislation. Were forms of words permitted to determine employee status, employers might take advantage of their superior bargaining power to induce workers to forego employee status all or part of the time in exchange for needed subsistence. See *Brooklyn Savings Bank* v. *O'Neil*, 324 U.S. 697, 707 (1945). Rights under the Act cannot be waived "because this would 'nullify the purposes' of the statute and thwart the legislative policies it was designed to effectuate." *Barrentine* v. *Arkansas-Best Freight System*, 450 U.S. 728, 740 (1981), quoting *Brooklyn Savings Bank* v. *O'Neill*, 324 U.S. at 707. The courts must therefore look beyond the agreements and understandings of the parties to answer the critical question whether coverage of an individual is within the contemplation of the Act. See *Rutherford Food Corp.* v. *McComb*, *supra*; *Goldberg* v. *Whitaker House Cooperative, Inc.*, 366 U.S. 28, 33 (1961); *Real* v. *Driscoll Strawberry Associates, Inc.*, 603 F.2d 748, 755 (9th Cir. 1979); *Usery* v. *Pilgrim Equipment Co.*, 527 F.2d 1308, 1315 (5th Cir.), cert. denied, 429 U.S. 826 (1976).[11] Here, although the associates claimed to be working in the Foundation's businesses as volunteers, there was ample evidence to justify the courts below in concluding that the associates did not labor "without promise or ex-

[11] A close analogy may be drawn to the question whether the transfer of a thing of value to an individual is a "gift" or whether it is taxable compensation for services rendered. As here (and for similar reasons), the characterizations of the transaction by the parties involved cannot be deemed dispositive. See *Commissioner* v. *Duberstein*, 363 U.S. 278, 291-292 (1960).

pectation of compensation" (*Walling* v. *Portland Terminal Co.*, 330 U.S. at 152).[12]

Although they undoubtedly had a variety of motives for working in the Foundation's businesses, the Alamo associates understood that they were supporting themselves by their work. Indeed, as the district court found (Pet. App. 10), "most of the associates of the Foundation are totally dependent upon the Foundation." The in-kind benefits provided to them are their sole source of support. It is fanciful to suggest that they would—or even could—continue working such long hours (often 12-14 hours per day, six or seven days per week) in the Foundation's businesses if they were not being paid these benefits.[13]

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[12] For their argument that the associates were volunteers rather than employees, petitioners rely heavily on *Turner* v. *Unification Church*, 473 F. Supp. 367 (D. R.I. 1978), aff'd, 602 F.2d 458 (1st Cir. 1979), a case brought by a former member of a religious organization for, inter alia, back wages alleged to be due under the FLSA for services soliciting money and selling such items as candy, flowers, and tickets to the organization's rallies. However, in *Turner* the court expressly found that the plaintiff's labors "cannot be termed voluntary or gratuitous" (473 F. Supp. at 377). The basis for the court's rejection of the plaintiff's claim is apparently that the Act does not reach work performed under conditions of involuntary servitude (*ibid.*)—a holding that knows no support in the law. Alternatively, the decision could be interpreted as holding, on the facts of that case, that the plaintiff proffered her services "without expecting any tangible compensation" (*ibid.*). Here, the district court's factual finding was to the contrary.

In *Rogers* v. *Schenkel*, 162 F.2d 596 (2d Cir. 1947), also relied upon by petitioners, the worker received no compensation of any kind for his services.

[13] Petitioners imply (Br. 21) that because one associate had "some money from an investment that I lived off of" (J.A. 72), and that another former associate had some trust income (J.A. 112), this Court should reject the findings of both lower courts that most associates were totally dependent on the benefits received from the Foundation. However, both petitioner Tony Alamo and numerous present and former associates have testified that the associates were dependent on those benefits. See page 9, *supra*. Even the

Evidence in the record is inconsistent with petitioners' apparent contention that the in-kind benefits were a generous bounty provided to the associates, rather than a form of compensation for services rendered. For example, one representative associate, Ann Elmore, was asked: "Was there ever anytime that you've been with the Foundation • • • that you've come to expect compensation or wages?" She answered, "No, sir. I can truthfully say it never even so much as entered my mind." Nonetheless, when asked whether she "expect[ed] the benefits," Ann Elmore replied that "the benefits are just a matter of—of course." Then she added, "we went out and we worked for them." J.A. 78. Apparently, her statement that she did not expect "compensation" meant that she expected no cash wages (and, of course, she received none). She clearly expected to receive the in-kind benefits; she had "worked for them." See also J.A. 64-65 (testimony that benefits were directly provided out of earnings from the associates' labors).

There was testimony that every associate in the State of Arkansas worked in one or more of the Foundation's businesses (J.A. 109-110). The courts below were justified in inferring that this indicated that such work was an obligation. Moreover, as discussed in the statement (page 10, *supra*), the associates' benefits often were directly related to the quality of the work they performed. Commissions were based on the volume of sales; associates were docked a portion of their expected benefits for various instances of poor performance; and their allocations of food were affected when they were unable to work. This nexus between work performed and benefits

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associate with the investment income stated that she was "completely and totally supported by the Foundation" (J.A. 74).

Petitioners also assert (Br. 21) that "it was not uncommon for the associates to go outside the Foundation to secure jobs." They cite the example of Bill Levy (J.A. 51). Petitioners fail to point out, however, that Bill Levy and other associates working outside the Foundation would turn over their entire paychecks to the Foundation (J.A. 52, 186, 207). Willingness to do so was apparently a condition to permission to accept outside employment. See J.A. 186.

received refutes any suggestion that the benefits were freely given as part of life in the religious community; rather, the benefits were conditioned on the performance of revenue-producing labor.

Moreover, former associates testified that they had believed (erroneously) that they had a legal interest in the assets of the Foundation. They "understood that the foundation became rich and so that we were all rich" (J.A. 189), and were led to believe that they were "shareholders" in the corporation (J.A. 178).[14] These statements show that the associates expected to receive a form of deferred compensation for their work; the statements are quite inconsistent with the status of volunteer.

Under these circumstances, the expectation that financial support will be provided in return for services rendered calls into play precisely the concerns addressed by Congress in enacting the Fair Labor Standards Act. The Act was intended to protect individuals who worked to support themselves from the ill effects of substandard living conditions, by ensuring that they receive minimum compensation from their labor. See *Powell* v. *United States Cartridge Co.*, 339 U.S. 497, 516 (1950); *A.H. Phillips, Inc.* v. *Walling*, 324 U.S. 490, 493 (1945). This protection is provided whether or not individuals desire it or think they deserve it. The Alamo associates have chosen to work for the Foundation's businesses in exchange for in-kind benefits; the law does not permit the level of compensation paid to them to fall below the statutory minimum.

Moreover, Congress's objective of protecting legitimate businesses from competition from employers paying substandard wages is implicated as well. A primary objective of legislation extending the Fair Labor Standards Act is to prevent unfair competition by employers who

[14] Only upon leaving the Foundation did former associates learn that they had no legal interest in the Foundation's assets: "the only share we had was to work for and to maintain and to live in Tony's and Sue's properties and businesses * * *. [T]hey were making quite a profit off of us and we were getting no salary, benefits, or rights" (J.A. 179). Accord, J.A. 189.

pay substandard wages; such practices are thought to "spread and perpetuate such labor conditions among the workers of the several States." See 29 U.S.C. 202(a); *Brooklyn Savings Bank*, 324 U.S. at 706 & n.17; *United States* v. *Darby*, 312 U.S. 100, 115 (1941). Congress specifically considered the impact on competition in its decision to include the commercial activities of non-profit organizations within coverage of the Act. See pages 19-20, *supra*.

It is therefore significant that, as the district court found (Pet. App. 5), "[t]he businesses owned or operated by the Foundation are ordinary commercial businesses which offer goods and services to the general public in competition with for-profit businesses." Accord, Pet. App. 52. Exempting the Foundation from the minimum wage, overtime, and recordkeeping requirements of the Act would confer upon it an unfair competitive advantage over similar businesses. See *Carter* v. *Dutchess Community College*, 735 F.2d 8, 13 (2d Cir. 1984). Were the Foundation and organizations like it not subject to the same requirements as competing businesses, the effect could well be, as Congress feared, to depress the wages of employees working for secular employers under otherwise identical conditions. Cf. *Gemsco, Inc.* v. *Walling*, 324 U.S. 244, 252-254 (1945). Competitors would be sorely pressed to adhere to the wage laws in the face of competition from commercial enterprises held to be exempt from the law because of their religious affiliations.

Thus, Congress has determined that when a non-profit organization chooses to engage in businesses on a basis competitive with others, it must comply with the rules generally applicable to its competitors. As stated by the court of appeals (Pet. App. 53), "[b]y entering the economic arena and trafficking in the marketplace, the foundation has subjected itself to the standards Congress has prescribed for the benefit of employees."

C. *NLRB* v. *Catholic Bishop* Does Not Require An Interpretation Of The Act That Would Exempt The Foundation's Commercial Operations

In *NLRB* v. *Catholic Bishop*, 440 U.S. 490 (1979), this Court held that where the assertion of jurisdiction by a federal agency over activities of a religious organization presents a "significant risk" of infringement of First Amendment rights, the authority will be upheld only if consistent with " 'the affirmative intention of the Congress clearly expressed' " (440 U.S. at 500, quoting *Benz* v. *Compania Naviera Hidalgo*, 353 U.S. 138, 147 (1957)). As the court of appeals concluded (Pet. App. 56-59), application of the minimum wage and recordkeeping requirements of the Act presents no such risk, and even assuming it did, such regulation is in accord with clearly expressed congressional intent.

As discussed in greater detail below, application of the Act to the commercial labors of the Alamo associates does not violate the Religion Clauses of the First Amendment, and indeed it presents no "significant risk" of so doing. The Act touches solely upon the commercial endeavors of the Foundation and its associates, and neither interferes with their ability to practice their faith nor entangles the government in questions of faith and doctrine. The FLSA is neutral, secular legislation, akin to health or safety regulations.

By contrast, in *Catholic Bishop*, the Court was faced with application of the National Labor Relations Act (NLRA) within a pervasively religious setting. This Court found that application of the NLRA to lay teachers in parochial schools would intrude deeply into decisions within the discretion of religious authorities, in light of the "critical and unique role of the teacher in fulfilling the mission of a church-operated school" (440 U.S. at 501). In particular, the Court reasoned, the resolution of unfair labor practice charges would, "in many instances, * * * necessarily involve inquiry into the good faith of the position asserted by the clergy-administrators and its relationship to the school's religious mission" (440 U.S. at 502). Moreover, the Court noted, the inevitable

Board inquiries regarding what are mandatory subjects of collective bargaining between the "clergy-administrators" and the unions representing the lay teachers would "implicate sensitive issues that open the door to conflicts" (*id.* at 503). These concerns were especially troubling because the schools in question were pervasively religious and their teaching was a central aspect of the church's religious mission. Since "nearly everything that goes on in the schools" would arguably become subject to collective bargaining (*id.* at 503 (citation omitted)), application of the NLRA would involve the government in explicitly religious affairs of religious institutions.[15]

In any event, even if the risk of First Amendment violation were greater, in this case, unlike *Catholic Bishop*, there is an "affirmative intent of Congress clearly expressed" to cover the commercial activities of non-profit religious organizations. See pages 18-20, *supra*. The Act must be applied in accordance with the clear import of its language and legislative history.

II. APPLICATION OF THE MINIMUM WAGE, OVERTIME, AND RECORDKEEPING REQUIREMENTS OF THE ACT TO THE COMMERCIAL OPERATIONS OF PETITIONERS DOES NOT VIOLATE THE RELIGION CLAUSES OF THE FIRST AMENDMENT OR THE EQUAL PROTECTION COMPONENT OF THE FIFTH AMENDMENT

The sensitivity of church-state relations in the context of government regulation varies with the nature of activity being regulated as well as the character of the regulation. Core religious activities such as worship, liturgy, prayer, formulation of doctrine, preaching, and internal organization are beyond the jurisdiction of government except insofar as they might impinge, in rare cases, on public safety, order, or other fundamental gov-

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[15] Lower courts have held that the NLRA is applicable to the secular activities of religious organizations. See, *e.g.*, *Tressler Lutheran Home for Children* v. *NLRB*, 677 F.2d 302, 305 (3d Cir. 1982); *NLRB* v. *World Evangelism, Inc.*, 656 F.2d 1349, 1353-1354 (9th Cir. 1981); cf *EEOC* v. *Pacific Press Building Ass'n*, 676 F.2d 1272, 1282 (9th Cir. 1982) (Title VII).

ernmental interests. Regulation of the charitable, educational, and social welfare ministries of religious organizations presents a more difficult problem, since they frequently will be viewed as religious by the religious organization but have secular implications from the perspective of government. This case involves none of these difficulties. It involves solely the regulation of the *commercial* operations of religious organizations, in which the congressional authority to regulate commerce is strong and the claim of religious immunity comparatively weak. Caution is appropriate to ensure that the government does not, through such regulation, become impermissibly entangled in the religious affairs of the organization or interfere with the organization's right to define its own structure and ministry. Nonetheless, a religious organization may generally be required, consistent with the First Amendment, to conform its business practices to the rules of the marketplace.

Petitioners claim that application of the minimum wage and recordkeeping provisions of the Fair Labor Standards Act to the Alamo associates working in the Foundation's commercial ventures would violate the Free Exercise Clause (Pet. Br. 29-37), the Establishment Clause (Pet. Br. 37-40), and the Equal Protection component of the Fifth Amendment (Pet. Br. 40-44). Each of these contentions was correctly rejected by the courts below.

A. The Free Exercise Clause Does Not Bar The Government From Applying Minimum Wage, Overtime, And Recordkeeping Requirements To Work By The Alamo Associates In Commercial Businesses

The minimum wage, overtime, and recordkeeping requirements of the Fair Labor Standards Act are secular, neutral requirements applying, with various exceptions not relevant here, to all employers engaged in commercial businesses, as well as to such institutions as hospitals, schools, and transit systems. On its face, the Act neither encourages nor inhibits the practice of religion or the entry of religious organizations into commercial activities.

Persons seeking an exemption from facially neutral requirements of this sort on Free Exercise Clause grounds must demonstrate, in specific ways, that application of the requirement would interfere with the free exercise of their religion. If they so demonstrate, the exemption may still be denied if to grant the exemption would frustrate achievement of an overriding governmental interest. *United States* v. *Lee*, 455 U.S. 252, 256-257 (1982). Petitioners' claim fails on both scores.

1. *The effect on the associates' freedom to practice their religion.* The first step in determining whether the government must be prohibited from applying a facially neutral statute to the activities of an individual is to determine whether application of the statute would interfere with the free exercise of his religion. *United States* v. *Lee*, 455 U.S. at 256-257. The burden is on the party seeking an exemption to present facts that would support the claim. This requirement should be treated with particular rigor where, as here, an employer seeks to avoid its obligation to comply with worker protective legislation on the basis of its employees' purported beliefs. While we do not challenge petitioners' standing to assert the religious views of members of their organization, we do submit that the courts have a responsibility to ensure that it is the associates' religious rights, and not the Foundation's pecuniary interests, that take precedence. Cf. *Donovan* v. *Shenandoah Baptist Church*, 573 F.Supp. 320, 325-326 (W.D. Va. 1983).[16]

Analysis of the Free Exercise claim here is difficult because petitioners have not stated clearly the basis for their objection to the minimum wage laws. They state (Br. 30) that

> [t]he associates desire no compensation for their labor at the Foundation as they consider their work a religious service. They simply want to volunteer their services in furtherance of the Foundation's reli-

[16] We would note that the only associate among the petitioners, Larry LaRouche (Pet. Br. 8), was formerly vice president of the Foundation (Pet. App. 6). It is not clear that he represents the views of the rank-and-file associates.

gious ministries. The application of this Act in this situation violates the associates' right to freely exercise their religious beliefs in that it forces this religious institution to pay wages in prescribed amounts and forces the volunteer worker to accept the same, contrary to his religious convictions.

At page 36 of their brief, petitioners elaborate: to impose upon the Foundation and the associates the regulations set forth in the Fair Labor Standards Act

> is to deny the petitioner, Larry LaRouche, and the other associates of their right to freely *contribute* their time and effort to religious endeavors and to deny them of their right to live in the religious setting of the Foundation, which is based upon a person's desire to freely and entirely give himself to God's work (emphasis in original).

Petitioners also state (Br. 32) that if the Act is applied to the Alamo associates in this context,

> the Act must also be applicable to (1) an individual who volunteers several hours each week to prepare meals for a church congregation on Sunday and Wednesday nights; (2) an individual who volunteers several hours each week to take the church youth to and from church services and related activities; (3) an individual who volunteers his time and effort to maintain the landscaping around the church building; (4) an individual who volunteers several hours each day to solicit pledges for the church budget; and so on and so on.

Finally, petitioners claim (Br. 36-37) that application of the Act to their commercial operations would violate the Free Exercise rights of the associates because it would "quickly lead to the demise of this Christian effort," since charitable organizations depend heavily upon volunteer help.

However, these assertions, which have not been accepted as a factual matter by the lower courts, seriously overstate the case.

a. *Freedom to contribute services.* Application of the Act to the associates' commercial labors, insofar as those

labors are undertaken in exchange for in-kind benefits, does not in any way impinge upon the associates' freedom to *contribute* their time freely to the organization—even to the organization's commercial ventures. True volunteers are not "employees" within the meaning of the Act. The government does not insist that volunteers receive compensation for their services; it insists only that when persons do labor in exchange for compensation they receive such compensation at congressionally-prescribed minima. It follows that the Foundation's ability to use true volunteer help is unaffected. If application of the Act leads "quickly * * * to the demise of this Christian ministry," it will be because the Foundation relies upon undercompensated employees rather than volunteers.

Petitioners' attempted analogy to various volunteer services in connection with the non-commercial activities of a church (such as preparing meals for the congregation or transporting the church youth to activities) is even farther afield. Not only would activities of this kind be exempt if performed by true volunteers; they would also be exempt if they are performed for religious or charitable and not "business purposes" and thus are not part of an "enterprise." See pages 3-4, 17, *supra*.

b. *Freedom to live in a religious community.* Nor, of course, does application of the minimum wage laws infringe upon the associates' "right to live in the religious setting of the Foundation." They are free to do so. It simply means that, if receipt of benefits is conditioned upon labor in the Foundation's commercial establishments, those benefits must satisfy the minimum wage standards.

c. *Receipt of compensation as an infringement on religious liberty.* Further, even if the associates "desire no compensation for their labor at the Foundation" (Pet. Br. 30), this would not mean, as petitioners imply (*ibid.*), that "to accept wages in prescribed amounts" is contrary to the associates' "religious convictions." Not "desiring" additional compensation is not the same thing as believ-

ing that receipt of additional compensation would violate their faith.

Decisions by this Court holding that individuals are exempt from facially neutral requirements on religious grounds have invariably been predicated on a conclusion that the requirement would force the individual to choose between violating a tenet of his faith and suffering a penalty (or foregoing a benefit). *Bob Jones University* v. *United States*, No. 81-3 (May 24, 1983), slip op. 28-29; see *Thomas* v. *Review Board*, 450 U.S. 707, 717 (1981) ("choice between fidelity to religious belief or cessation of work"); *Sherbert* v. *Verner*, 374 U.S. 398 (1963) (same); *Wisconsin* v. *Yoder*, 406 U.S. 205, 218 (1972) (secondary schooling requirement "contravenes the basic religious tenets and practice of the Amish faith"); *Follett* v. *Town of McCormick*, 321 U.S. 573 (1944) (license requirement would prevent individual from "preaching the gospel"); *Murdock* v. *Pennsylvania*, 319 U.S. 105 (1943) (same). The Free Exercise Clause accords special protection to "religiously motivated claims of conscience." *Marsh* v. *Chambers*, No. 82-23 (July 5, 1983), slip op. 17 (Brennan, J., dissenting). It does not, however, protect any or all religiously motivated "desires." Nor can a claim of an infringement on religious liberty be based on no more than an assertion of its existence.

Petitioners rather vaguely assert (Br. 30) that forcing "the volunteer worker" to accept "wages in prescribed amounts" is "contrary to his religious convictions." Without explaining the significance of the comments, petitioners quote (Br. 31) two representative associates, Ann Elmore and Bill Levy, to the effect that the thought of compensation is "vexing to my soul" (J.A. 79) and that to be forced to take a wage "offends my right to worship God as I choose" (J.A. 63)[17] Neither of these statements, however, is especially illuminating. There is nothing peculiarly religious about Elmore's sentiment. Persons may be vexed for entirely non-religious reasons by what they feel to be the anti-communitarian quality of making explicit the nexus between what they do and what they get. And Levy's statement, while making clear that the source of his objection is religious, leaves the courts entirely in the dark regarding what it is about the minimum wage laws that he finds objectionable. For amplification, it is necessary to examine these associates' other comments and actual behavior.

[17] Levy also objected to the recordkeeping requirement (Pet. Br. 31-32; J.A. 59); however, this adds little to petitioners' Free Exercise claim. The Act requires employers, not employees, to maintain records, and requires only records of time spent in commercial activities. It is difficult to see, therefore, how the recordkeeping requirements could interfere with Levy's free exercise of religion. His complaint that "before you know it, I would be just doing nothing but filling sheets all day long" (J.A. 59) is not unique to religious persons; the Alamo associates, like other persons, have an appropriate forum for relief if they believe that reporting and recordkeeping requirements are unnecessarily burdensome. See 44 U.S.C. 3501 *et seq.*

The record clearly belies the suggestion that Elmore or Levy objected to receiving compensation of any kind. Both in fact received substantial food, lodging, medical, and other in-kind benefits in return for their services. See J.A. 61, 74-75. Indeed, Elmore stated (J.A. 78) that she expected these benefits "as a matter of—of course," since "we went out and worked for them.'"[18] And Levy described the benefits as "great benefits" that are "obviously well and above what you could get if you had a minimum wage scale" (J.A. 62).

Moreover, it is clear that the associates had no religious objection to owning money. Elmore, for example, "had some money from an investment that I lived off of" (J.A. 72).[19] Nor did they object to receiving a wage; some

[18] She also commented that "if you want to eat, you've got to work" (J.A. 76).

[19] This case does not, therefore, involve anything akin to a vow of poverty. This Court thus need not address the different, and perhaps more difficult, constitutional questions that might arise if the Act were applied to persons in such a way as to preclude fidelity to such a vow.

associates, with the sanction of the Foundation, took jobs outside the Foundation for which they received wages, presumably at or above the statutory minimum. See J.A. 186, 207. Nor does there appear to have been any religious requirement that the associates' standard of living be at a low or subsistence level. The associates seemed quite pleased with the perceived high level of benefits (see, *e.g.*, J.A. 62, 75, 89), and felt no reluctance to claim that, with the Foundation's increasing prosperity, "we were all rich" (J.A. 189).

The Foundation could, therefore, comply with the minimum wage laws without violating the religious beliefs of the associates. All it need do is provide in-kind benefits and demonstrate that they are at a level sufficient to satisfy the statutory standard.[20] Or, if it chose to supplement the benefits with cash wages, the associates could donate the money back to the Foundation, much as they do their earnings from outside employers. So long as such donations were given freely, without unlawful coercion, the arrangement would provide a means for complying with the minimum wage law. See *Marshall* v. *Seventh Day Adventists*, 23 Wage & Hour Cas. (BNA) 316, 318 (C.D. Cal. 1977).

Nothing in the allegations or evidence presented by petitioners demonstrates that compliance with the Act is impossible without violation of the associates' religious beliefs. In the absence of such a demonstration, this Court should not invalidate a major federal regulatory program on the basis of generalized or speculative suggestions regarding religious convictions.

2. *The governmental interest.* Even assuming that application of the Act to the commercial labors of the associates would infringe upon their free exercise of religion, the regulatory program must still be sustained if it is justified by an "overriding governmental interest." *United States* v. *Lee*, 455 U.S. at 257-258; see *Bob Jones*

[20] The Act does not require that the minimum wage be paid in cash. See 29 U.S.C. 203(m). Therefore, if the associates objected to receiving cash wages, the Foundation would still be able to comply with the Act.

University, slip op. 28. The government has two significant interests in applying the minimum wage laws to persons employed in commercial businesses owned by religious organizations.

First, the government has an interest in protecting workers in commerce from substandard wages. "The principal congressional purpose in enacting the Fair Labor Standards Act of 1938 was to protect all covered workers from substandard wages and oppressive working hours, 'labor conditions [that are] detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers.'" *Barrentine* v. *Arkansas-Best Freight System*, 450 U.S. at 739, quoting 29 U.S.C. 202(a). Congress determined that minimum wage legislation is necessary because of the lack of bargaining power generally within the reach of employees in the lowest paying jobs. *Brooklyn Savings Bank* v. *O'Neil*, 324 U.S. at 706-707 & n.18. This interest in guaranteeing each worker a minimum standard of living is no less strong merely because the businesses in which some persons work are owned by religious or other non-profit organizations. See *Mitchell* v. *Pilgrim Holiness Church Corp.*, 210 F.2d at 884; cf. *Prince* v. *Massachusetts*, 321 U.S. 158 (1944).

Petitioners contend (Br. 33) that this governmental interest is insubstantial because testimony by representative associates showed that they enjoyed a high standard of living. Precisely how generous were the benefits provided to the associates, however, is a matter of dispute. Pet. App. 13. If petitioners can show on remand that the benefits they provide the associates are in fact the equivalent of the minimum wage, then they will be found in compliance with Section 6 of the Act.[21] If the benefits fall below the statutory level, it suggests that the associates may need the protections of the Act.

Second, aside from protection of the Alamo associates themselves, the government has an interest in protecting other commercial enterprises from competition from em-

[21] The Foundation would still be required to comply with the Act's recordkeeping and overtime requirements.

ployers that pay substandard wages. Congress has found that the payment of substandard wages "constitutes an unfair method of competition in commerce" (29 U.S.C. 202(a)(3)). Enforcement of the Act would be seriously undermined if the government were forced to permit some businesses to pay substandard wages, while requiring their competitors to comply with the Act. The marketplace does not distinguish between goods produced under religious auspices by the faithful and those manufactured in secular establishments by non-believers. Where activities engaged in by a religious organization result in the production of goods and services that compete in interstate commerce, the government has an interest in ensuring that all competitors are subject to the same rules. See 107 Cong. Rec. 6255 (1961) (statement of Sen. McNamara).

The strength of the governmental interest here is comparable to that of the requirements upheld against Free Exercise challenges in *United States* v. *Lee*, *supra*, and *Braunfeld* v. *Brown*, 366 U.S. 599 (1961). Like the social security tax at issue in *Lee*, the minimum wage law is a "comprehensive national" system, that would be difficult to administer in the face of "myriad exceptions flowing from a wide variety of religious beliefs." 455 U.S. at 258, 260. And as was the case with the Sunday closing laws at issue in *Braunfeld*, to carve out religiously-based exemptions from the minimum wage law "might well provide these people with an economic advantage over their competitors." 366 U.S. at 608.[22]

Petitioners' arguments for exemption from coverage of the Act are more properly directed to Congress, which has the authority to make accommodations to the religious

[22] *Murdock* v. *Pennsylvania*, *supra*, and *Follett* v. *Town of McCormick*, *supra*, relied upon by petitioners (Br. 34-36), are easily distinguishable. Both cases concerned the dissemination of explicitly religious materials, whereas in this case the activities that the government seeks to regulate are commercial. This is precisely the distinction drawn in *Murdock*, 319 U.S. at 111. Moreover, the governmental interest in *Murdock* and *Follette*—the raising of revenue—could easily be satisfied through alternative sources. See *Braunfeld* v. *Brown*, 366 U.S. at 607 n.4.

interests of the people, even where such accommodation is not required by the Free Exercise Clause. *McDaniel* v. *Paty*, 435 U.S. 618, 639 (1978) (Brennan, J., concurring); *Zorach* v. *Clauson*, 343 U.S. 306 (1952). Between the mandates of the Free Exercise Clause and the strictures of the Establishment Clause, Congress has significant discretion to determine whether religious exemptions from otherwise neutral requirements would be appropriate.

Indeed, the drafters of the Bill of Rights expected that principal responsibility for protecting religious interests in the context of neutral governmental requirements would rest with the states and the Congress. Exemptions from compulsory military service—perhaps the paradigm of permissive governmental accommodation of religious belief—were discussed by members of the First Congress during their deliberations on what is now the Second Amendment. The House of Representatives adopted by a narrow margin (24-22) a proposal that would have exempted religious conscientious objectors from military duty. 1 Annals of Cong. 778, 780 (Aug. 17, 1789) (J. Gales ed. 1834). The Senate rejected the inclusion of this provision in the Bill of Rights and it was deleted in conference. Opposition to the proposal was based, in large part, on the view that "[n]o man can claim this indulgence of right. It * * * ought to be left to the discretion of the Government" (*id.* at 780 (statement of Rep. Benson)).

This history accords with the Court's frequent recognition that the government has the discretion to exempt religious and similar institutions from general regulations where to do so would enhance religious liberty and not interfere with achievement of the underlying policy. *E.g.*, *United States* v. *Lee*, 455 U.S. at 260-261; *St. Martin Evangelical Lutheran Church* v. *South Dakota*, 451 U.S. 772 (1981); *NLRB* v. *Catholic Bishop*, 440 U.S. 490 (1979); *Wisconsin* v. *Yoder*, 406 U.S. 205, 234-235 n.22 (1972); *Gillette* v. *United States*, 401 U.S. 437 (1971); *Walz* v. *Tax Commission*, 397 U.S. 664 (1970).

The area of mandatory accommodation, where this Court has concluded that the Free Exercise Clause mandates special treatment for religious claims, absent an overriding governmental interest, is strictly limited to direct clashes between governmental requirements and religious scruple. See page 36, *supra*. The scope for discretionary accommodations by Congress and the states is much wider.

Congress has enacted provisions that have the effect of significantly accommodating religious practices in the context of the minimum wage laws. Cf. *United States* v. *Lee*, 455 U.S. at 260-261. It has not extended those laws to the noncommercial aspects of activities of religious and other non-profit organizations (see pages 3-4, *supra*), and it has left room for an interpretation of the Act by the Department, under a variety of sources of authority and in accordance with suggestions in the legislative history, that would not cover members of religious orders working pursuant to religious obligation in hospitals, schools, and similar covered, but noncommercial, activities operated by their order (see page 5, *supra*). In addition, the exemptions for professionals (see page 3, *supra*) and the lack of coverage of self-employed persons (including members of bona fide cooperatives) have the effect of removing from coverage many clergy and members of religious communities. If Congress were to enact carefully-tailored provisions for limited commercial activity by self-supporting religious communities, they would likely pass muster under the Establishment Clause. Cf. 26 U.S.C. 512(b)(15). But Congress has not done so, and nothing in petitioners' submission suggests that the Constitution affirmatively mandates it.

Petitioners' rather extravagant claims for exemption from the Act go well beyond anything that Congress has contemplated. Commercial activities of the sort at issue here—gasoline stations, construction companies, restaurants, retail stores—are at the core of the Act's coverage. To exclude full-time workers in these businesses from the protections of the Act (while continuing to require the Foundation's competitors to comply) would open a major

loophole. As in *United States* v. *Lee*, 455 U.S. at 260-261, "Congress has accommodated, to the extent compatible" with the policies of the Act, religious practices that would be adversely affected, "but every person cannot be shielded from all the burdens incident to exercising every aspect of the right to practice religious beliefs." Congress has "dr[awn] the line," and the minimum wage legislation "imposed on employers * * * must be uniformly applicable to all, except as Congress provides explicitly otherwise." *Id.* at 261 (footnote omitted).

B. Application Of The Minimum Wage, Overtime, And Recordkeeping Requirements Of The Act To The Commercial Operations Of The Foundation Does Not Violate The Establishment Clause

Petitioners contend (Br. 37-40) that application of the Act to their commercial activities would also violate the Establishment Clause, both because it would "seriously inhibit religious activity" (Br. 38) and because it would foster "excessive government entanglement with religion" (Br. 39).[23] This argument was correctly rejected by the courts below.

Application of the minimum wage would, according to petitioners (Br. 38-39), inhibit the practice of religion because "charitable and religious organizations would not be able to provide the services they currently make available if it were not for the labor of volunteers." However, as the court of appeals pointed out (Pet. App. 56), the Act "has nothing to do with religion, and neither ad-

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[23] We question whether the Establishment Clause is the proper source of the constitutional interests invoked by petitioners. But see generally Esbeck, *Establishment Clause Limits On Governmental Interference With Religious Organizations*, 41 Wash. & Lee L. Rev. 347 (1984). This Court has never struck down a regulatory program on Establishment Clause grounds. In *NLRB* v. *Catholic Bishop*, *supra*, which raised issues in some ways similar to these (see pages 30-31, *supra*), the Court simply referred to the Religion Clauses, rather than to the Free Exercise or Establishment Clauses individually. Use of the Establishment Clause in this context is difficult to justify in light of the historical understanding of the term "establishment."

vances nor inhibits religious concerns." Accord, *Donovan* v. *Shenandoah Baptist Church*, 573 F.Supp. at 324. Nor does the Act interfere with the Foundation's right to use genuine volunteers. All the Act requires of the Foundation is to comply with generally-applicable regulations for employment in commercial enterprises.

Enforcement of the Act's recordkeeping requirements would, according to petitioners (Br. 39-40), "produce a continuing day-to-day relationship between a church (and its policies) and the Government," and thus violate the Establishment Clause. Significantly, however, each of the examples of "excessive entanglement" offered by petitioners involves volunteer work by individuals in connection with the internal religious functions of a church—preparing meals for church members on Sunday and Wednesday nights prior to prayer meetings, doing carpentry work around the church building, and so on. Such examples would not be covered by the Act, since by hypothesis they are performed by volunteers and the activities described would not appear to be for "business purposes."

Petitioners' selection of examples is telling because the concept of "excessive entanglement" applies essentially to religious matters. The purpose of the Religion Clauses in this area is to "keep the state from interfering in the essential autonomy of religious life." *Marsh* v. *Chambers*, slip op. 9 (Brennan, J., dissenting). Secular authorities have no competence to deal with questions of faith, discipline, or church organization. But government actions of a purely secular character—for example, safety, health, zoning, or fire code regulations—are permissible despite the resultant contacts between governmental and religious authorities. *Lemon* v. *Kurtzman*, 403 U.S. 602, 614 (1971); *Braunfeld* v. *Brown*, 366 U.S. at 613-614; *Prince* v. *Massachusetts*, 321 U.S. at 166-167; *Cox* v. *New Hampshire*, 312 U.S. 569, 574 (1941).

Here, the governmental contacts are highly unproblematical. Neither this Court nor any other has held that the employment relationship between a church and its nonecclesiastical employees is an internal religious matter not subject to government regulation. See *St. Elizabeth Hospital* v. *NLRB*, 715 F.2d 1193, 1196-1197 (7th Cir. 1983); *EEOC* v. *Southwestern Baptist Theological Seminary*, 651 F.2d 277, 287 (5th Cir. 1981), cert. denied, 456 U.S. 905 (1982); *Turner* v. *Unification Church*, 473 F. Supp. 367, 371-372 (D. R.I. 1978), aff'd on other grounds, 602 F.2d 458 (1st Cir. 1979); *Marshall* v. *First Baptist Church*, 23 Wage & Hour Cas. (BNA) 386 (D. S.C. 1977). The relationship sought to be regulated—that between the Foundation and its workers in commercial ventures—is essentially secular. Cf. *NLRB* v. *Catholic Bishop*, 440 U.S. at 504 (church-teacher relationship in a religious school is infused with religious considerations). And the government's role is strictly limited to secular questions regarding hours worked and wages paid.

Petitioners rely especially on the recordkeeping requirements to support their Establishment Clause argument. See Pet. Br. 37-38. However, the records required to be kept, concern such innocuous, secular matters as employee names, hours worked, and wages paid. 29 C.F.R. 516; see *Donovan* v. *Shenandoah Baptist Church*, 573 F. Supp. at 325; *Donovan* v. *Central Baptist Church*, 25 Wage & Hour Cas. (BNA) 815, 817 (S.D. Tex. 1982). The recordkeeping requirements pertain only to the employer's commercial activities; the Foundation need make no report about its associates' time spent in witnessing, praying, preaching, or other religious activities. No questions of religion would enter into the records. These recordkeeping requirements are, indeed, less extensive and intrusive than those upheld against Establishment Clause challenge in *Committee for Public Education & Religious Liberty* v. *Regan*, 444 U.S. 646, 659-661 (1980); see also *EEOC* v. *Southwestern Baptist Theological Seminary*, *supra* (upholding requirement of biennial report monitoring Title VII compliance, including, inter alia, salary, job description, race, gender, and national origin of all seminary employees other than ministers); *United States* v. *Holmes*, 614 F.2d 985, 989 (5th Cir. 1980) (upholding

tax summonses to determine propriety of church's claim of tax-exempt status).

It is well established that when a religious organization engages in secular, commercial activities, it becomes subject to secular authority. As this Court stated in *United States* v. *Lee*, 455 U.S. at 261, "[w]hen followers of a particular sect enter into commercial activity as a matter of choice, the limits they accept on their own conduct as a matter of conscience and faith are not to be superimposed on the statutory schemes which are binding on others in that activity." For example, income generated by a church's unrelated trade or business is subject to federal taxation, with all the recordkeeping that entails. 26 U.S.C. 511, 513. And a religious organization that chooses to operate as a broadcasting licensee must comply with F.C.C. rules regarding employment. *King's Garden, Inc.* v. *FCC*, 498 F.2d 51, 60 (D.C. Cir.), cert. denied, 419 U.S. 996 (1974). Here, the Alamo Foundation has chosen to engage in a wide variety of commercial businesses, in competition with for-profit companies. It must, therefore, comply with facially neutral rules governing the employment relation in commerce.

C. Treatment Of Foundation Associates As Employees, And ACTION Volunteers As Volunteers, Has A Rational Basis And Does Not Violate The Equal Protection Component Of The Fifth Amendment

Petitioners contend (Br. 40-44) that the application of the Act to their commercial operations violates the equal protection guarantee of the Fifth Amendment because Congress has not applied the Act to volunteers in programs supervised by the federal government, such as ACTION. This argument is frivolous.

The standards under which such a claim is to be evaluated have been set forth many times by this Court. See, *e.g.*, *Minnesota* v. *Clover Leaf Creamery Co.*, 449 U.S. 456, 461 (1981); *McGowan* v. *Maryland*, 366 U.S. 420, 425 (1961). A classification treating some groups differently than others, unless based on suspect categories or affecting fundamental rights, must be upheld if it has a

rational basis; that is, unless the classification rests on grounds wholly irrelevant to the achievement of the governmental objective.

The activities of federal volunteers are limited by the government itself and subject to government control and supervision. Moreover, unlike the Alamo endeavors, work in government volunteer programs is restricted to "activities which would not otherwise be performed by employed workers and which will not supplant the hiring of or result in the displacement of employed workers." 42 U.S.C. 5044(a). Accordingly, Congress could rationally have concluded that minimum wage coverage of such volunteers is needed neither for their own protection nor for the prevention of unfair competition with private employers.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

REX E. LEE
Solicitor General

CHARLES FRIED
Special Assistant to the Attorney General

MICHAEL W. MCCONNELL
Assistant to the Solicitor General

FRANCIS X. LILLY
Solicitor of Labor

KAREN I. WARD
Associate Solicitor

CAROL A. DE DEO
Counsel for Appellate Litigation

SANDRA LORD
BARBARA J. JOHNSON
Attorneys
Department of Labor

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In The
Supreme Court of the United States
October Term, 1984

TONY AND SUSAN ALAMO FOUNDATION, TONY ALAMO, SUSAN ALAMO, AND LARRY LAROUCHE,

Petitioners,

v.

RAYMOND J. DONOVAN, SECRETARY OF LABOR,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

PETITIONERS' REPLY BRIEF ON THE MERITS

ROY GEAN, JR.*
ROY GEAN, III
GEAN, GEAN & GEAN
First America Building
Suite 500, 524 Garrison Avenue
Fort Smith, Arkansas 72901-2519
(501) 783-1124

Attorneys for Petitioners
*Counsel of Record

COCKLE LAW BRIEF PRINTING CO., (800) 835-7427 Ext. 333

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STATEMENT OF THE CASE

Before replying directly to the Secretary's Argument and the Amicus Curiae Brief, the petitioners desire to bring to this Court's attention several misleading assertions found in the "Statement" of the Brief for the Respondent-Secretary.

The Secretary made the following statement: "Evidence regarding the number of hours worked by the associates varied, but, as the District Court noted (Pet. App. 9), witnesses 'testified that they were required to work as long as 12 to 15 hours per day, 6 or 7 days per week'." (Resp. Br. 8.) In the context of this statement, the Secretary obviously attempts to imply that the District Court found that the associates worked 12 to 15 hours per day, 6 or 7 days per week. This statement is extremely misleading as the District Court rejected such a position and specifically found:

> The figures of 10 hours per day, 6 days per week were elicited from *former* associates in response to leading questions on depositions. (Appendix A, App. 9, of Petition for Writ of Certiorari, hereinafter referred to simply as "Appendix A".)
>
> . . .
>
> [I]t is not reasonable to conclude that all of the adult associates are working in commercial business, or, that the ones who do work in the commercial business do so on the regular basis suggested by the Secretary. (Appendix A, App. 10.)
>
> . . .

The Secretary also asserts in his "Statement" that "the Foundation businesses were staffed primarily by some 300 associates". (Resp. Br. 7.) The record does not support this position, and the same was specifically rejected by the District Court. As stated in its *Memorandum and Order*, the District Court held:

[T]*here is no basis for concluding, as the Secretary suggests, that all 300 of the associates worked in the Foundation's commercial businesses. To the contrary, the evidence reflects that the associates have constructed, decorated and furnished a number of residences, an apartment building, a church, and various other structures used by the Foundation and its associates for non-commercial purposes.* The labor for much of this construction and the continuing maintenance of the structures was furnished by the associates. As previously mentioned, some associates work at the Foundation in non-commercial jobs, such as babysitting at the nursery, cooking for the other associates, etc. Furthermore, the Foundation produces a television show which obviously requires some non-commercial work time; some associates "witness" on the streets, in hospitals, jails and other places; and some help organize new churches. *Additionally, some associates are employees of businesses other than the Foundation's and simply turn their paychecks over to the Foundation.* (Appendix A, App. 9, 10.) (emphasis ours)

It should also be noted that to develop his "Statement", the Secretary relies heavily upon the deposition testimony of *former* associates. With regard to these former associates, the District Court made the following finding: "Some of the witnesses who testified by deposition were former associates who had become disillusioned with the Foundation and Tony Alamo." (Appendix A, App. 7, footnote 3.) These former associates were bias to the point of absurdity. For example, and as the Secretary points out, one former associate stated sewers in the sewing room would "frequently work three or four days straight in a row without any sleep or even a break". (J.A. 121-122.) Not only do these statements suggest the physically impossible, but they are contradicted by the testimonies of the representative associates. One, in describing the sewing room, stated: "And as far as people

sewing all night and all day, they had a little sewing deal where the girls would sew some quilts and things like that. It was just like a little sewing circle that the girls did." (J.A. 50.) This associate went on to say that what was sewn in the sewing room was primarily for the associates of the Foundation or the poor. (J.A. 50.) Another representative associate stated that the sewing room was where someone would go if they "wanted to do some personal sewing, make an Easter outfit for their children" or if they wanted to "show people how to put in a zipper and how to cut out patterns and that sort of thing". (R. Vol. II, p. 148.) The record also reflects that the former associates testifying upon behalf of the Secretary were the same individuals who had wrongfully accused the Foundation and Tony Alamo of criminal conduct in the preparation of various tax forms. (R. Vol. 1I 202, 203.)[1] The Secretary's reliance upon the testimony of the former associates is clearly misplaced. As the District Court stated, the former associates "had become disillusioned with the Foundation and Tony Alamo". (Appendix A, App. 7, footnote 3.)

Furthermore, the Secretary states: "As Tony Alamo has acknowledged (J.A. 92-93), 'numerous' families were 'dependent' upon these benefits provided by the Foundation for their substance." (Resp. Br. 9.) The record contradicts such statement. When Tony Alamo was asked: "And these families are depending entirely on their substance from their association together in the Foundation and the church of Tony and Susan Alamo Foundation?" (J.A. 93), he replied: "As they have testified, some of

---

[1]The allegations made by these former associates were found to be false by the Internal Revenue Service. (R. Vol. II 202, 203.)

them go out on outside (p. 199) jobs to help provide for everyone there." (J.A. 93.)

Moreover, in response to the Secretary's argument that the associates were totally dependent upon the Foundation, we remind the Court that of the three representative associates, all worked in jobs outside the Foundation or had outside sources of income. (J.A. 51, 72 and R. Vol. II, p. 170.) Furthermore, most of the former associates worked in jobs outside the Foundation.

In addition, the record is clear that the so-called "businesses" of the Foundation continually operate at a loss. (R. Vol. II, p. 200.) The primary purposes of the continued operation of the "businesses" or activities of the Foundation are to provide a forum for rehabilitation for various associates who were addicted to drugs or who were engaged in criminal activity prior to their association with the Foundation and to provide a forum for the sharing of their religious beliefs. As found by the Court of Appeals for the Eighth Circuit: "The organization's evangelical work has been carried on among derelicts, drug addicts, and criminals. As part of their rehabilitation, they perform useful work in the thirty-some commercial businesses operated by the Foundation." (Appendix A, App. 49-50.)

Further, the Secretary premises various arguments upon his assumption that receipt of benefits is conditioned upon labor in the Foundation's commercial establishment. (Resp. Br. 35.) This assumption is contrary to the evidence. As found by the District Court: "[I]t is not reasonable to conclude that all of the adult associates are working in the commercial businesses, or that the ones who do work in the commercial businesses do so on the regular basis suggested by the Secretary." (Appendix A,

App. 10.) The representative associate, Ann Elmore, received benefits during her entire association with the Foundation despite the fact that she "did nothing but read the Bible and pray [and] . . . go out in the streets and witness and testify [during her] . . . first five years" with the Foundation. (J.A. 73.)

The record is also clear that the Foundation provides benefits to those who are mentally unable to perform services in commercial ventures (e.g., "feeble minded" and "retarded"). (R. Vol. II, p. 188.) Moreover, the benefits are received by those who are engaged in evangelical activities only (J.A. 49, 56, 57, 73.) Consequently, the receipt of benefits *is not* conditioned upon labor performed in the so called businesses.

The Secretary's "Statement" is replete with inaccuracies and misleading statements. For a further example, in his "Statement", in an attempt to partially conceal the true extent of the District Court's Order, the Secretary states that District Court held the application of the Act to be proper only regarding those associates who worked in activities that are commercial in nature. The Order of the District Court, however, applied the Act to "all persons who have been associates of the Foundation, or who have worked in any of the businesses of the Foundation. . . ." (Appendix A, App. 43, 44.)

Since the Secretary grounds his arguments upon these inaccuracies, this Court should reject the Secretary's position set forth in his "Respondent's Brief".

ARGUMENT

I. The Petitioner, Larry LaRouche, And The Other Associates Of The Foundation Volunteered Their Servies To The Foundation Without Expectation Of Wages Or Compensation In Any Form And, Accordingly Should Not Have Been Declared To Be "Employees" As Defined By The Fair Labor Standards Act.

Under this point, the Secretary fails to recognize the importance and the scope of *Walling v. Portland Terminal Co.*, 330 U.S. 148, 67 S. Ct. 639, 91 L. Ed. 809 (1947) wherein this Court excluded from the Fair Labor Standards Act "each person who, *without promise or expectation* of compensation, but solely for his personal purpose or pleasure, worked in activities carried on by other persons either for their pleasure or profit". *Id.* at 330 U.S. 152 (emphasis ours). The Secretary requests this Court to ignore the expressed "expectations" of the associates in determining their status as an employee or a volunteer. In a representative capacity, three associates of the Foundation were called to testify about whether they expected wages or compensation for their services rendered at the Foundation. Each unequivocally stated that he or she expected no wages or compensation in any form for the services they perform at the Foundation. The Secretary failed to produce any associate who would testify contrary to the three representative associates. (Appendix A, App. 7.) The associates' expectations were clearly established at trial. Yet, the Secretary ignores the testimony of the associates and attempts to substitute his judgment for the expressed expectations of the associates. The Secretary argues: "In determining whether individuals have truly volunteered their services, without any expectation that they will be compensated, the

Department considered a variety of factors. . . ." (Resp. Br. 4.) Certainly, the petitioners do not contend that circumstances surrounding the relationship of the associates and the Foundation should be overlooked; however, such circumstances should not be used to circumvent the expressed expectations and desires of the associates when such expressions are clear and reasonable. In effect, the Secretary is attempting to qualify the declarations of this Court in *Walling v. Portland Terminal, supra.*, by imposing his own standards of determining "expectations".

Under this point of Argument, the Secretary states: "It is fanciful to suggest that they [the associates] would —or even could—continue working such long hours (often 12-14 hours per day, six or seven days per week) in the Foundation's businesses if they were not being paid these benefits." (Resp. Br. 26.) No evidence was presented to show a work day of the nature just described above. The District Court rejected the same position asserted earlier by the Secretary. (Appendix A, App. 9, 10.) It was recognized by the District Court that the record reflects that the associates are involved in various non-commercial activities, such as constructing, decorating, and furnishing residences for the associates, a church, and "other structures used by the Foundation and its associates for non-commercial purposes". (Appendix A, App. 9.) Despite this evidence, the Secretary would have this Court believe that the associates work six to seven days a week, twelve to fourteen hours a day, in commercial activities. Every attempt has been made by the Secretary to undermine the religious and charitable aspect of the Foundation and its activities.

The Secretary asserts that the Court should disregard the expressed desires and expectations of the associates and should look to "objectively ascertainable facts"

in determining the "employee" question. The Secretary then directs this Court's attention to selective facts, which he feels supports his position. This argument is unfounded in law and is obviously self-serving. Assuming for the sake of argument that the Secretary's position is correctly stated, the petitioners bring to the Court's attention the following "objectively ascertainable facts": (1) None of the associates, former or current, personally sought a claim for compensation; (2) All of the former associates, at the time they were at the Foundation and working at the Foundation's "businesses", considered themselves volunteers; (3) all of the current associates consider themselves to be volunteers; (4) a large number of associates work "outside" the Foundation and receive paychecks from employers who are unconnected with the Foundation and any of its activities; (5) other associates have independent sources of income while at the Foundation; (6) many of the associates work in activities that are of a religious, charitable, and/or non-commercial nature (Appendix A, App. 9, 10.); and, (7) the associates receive benefits from the Foundation regardless of the nature of the work they perform. Thus, the associates' expressed expectations are supported by the facts surrounding their relationship with the Foundation.

Certainly, it cannot be questioned that the expectations and desires of the associates are relevant in light of *Walling v. Portland Terminal Co., supra,* and *Rogers v. Schenkel*, 162 F. 2d 596 (2nd Cir. 1947), both of which unequivocally hold that an "employee" as defined by the Fair Labor Standards Act must be a person who performs services with an expectation of compensation.[2] The in-

[2]The Secretary's attempt to distinguish the case at hand from *Turner v. Unification Church,* 473 F. Supp. 367, aff'm. 602 F.2d 458 (1st Cir. 1979) fails in that he simply states the holding in *Turner* "knows no support in the law". (Resp. Br. 26.)

tent of the associates is material to the question of whether they are "employees", and such should not be disregarded as the Secretary contends.[3]

The petitioners are not attempting to frustrate the purposes of the Fair Labor Standard Act by directing the Court's attention to the expectations and desires of the associates. They are merely emphasizing that the associates and their relationship with the Foundation do not fall within the scope or purpose of the Act.

The Secretary also contends that "the benefits [received by the associates] were conditioned upon the performance of revenue-producing labor". (Resp. Br. 28.) The record, however, contradicted such a contention. The record is clear that the "commercial enterprises" of the Foundation operate at a loss. The Foundation receives various public donations, though it does not solicit them. Furthermore, many of the associates derive income from working for outside employers. It is difficult, if not impossible, to see how the benefits offered are conditioned upon the performance of revenue producing labor when the funding of the Foundation comes from outside the Foundation and its "commercial ventures".

[3]In support of his argument that the Court must look beyond the understanding of the parties, the Secretary cites *Rutherford Food Corp. v. McComb,* 331 U.S. 722 (1947); *Goldburg v. Whittaker Cooperative, Inc.,* 366 U.S. 28, 33 (1961); *Real v. Driscoll Strawberry Associates, Inc.,* 603 F.2d 748 (9th Cir. 1979); and *Usery v. Pilgrim Equipment Co.,* 527 F.2d 1308 (5th Cir.), *cert. denied,* 429 U.S. 826 (1976). These cases, however, are concerned only with the distinction of an independent contractor and an employee. The question of whether the individuals in these cases rendered services with or without an expectation of compensation was not presented in any of these cases.

II. The District Court Improperly Disregarded The Voluntary Nature Of The Associates' Work Because Some Of The Work Was Done In Activities Customarily Considered "Commercial".

The Secretary's argument against placing the volunteer label on each associate seems to find itself grounded in the fact that the various associates worked in the Foundation's "businesses". (Resp. Br. 23, 25, 26, 27, 28, 29.) This Court, however, should not disregard the voluntary nature of the associates' work simply because some of it was performed in activities which may be considered "commercial". The cases of *Walling v. Portland Terminal Company, supra; Rogers v. Schenkel, supra;* and *Turner v. Unification Church, supra,* illustrate that the Courts look to the intent of the worker and not the nature of his work in determining whether he is a volunteer or employee.

III. The Petitioner, The Tony And Susan Alamo Foundation, Should Not Have Been Found An "Enterprise" As Defined By The Fair Labor Standards Act Since It Is, And At All Times Revelant Hereto Was, A Non-Profit Religious Organization Exclusively Created And Operated For Religious Purposes.

The Secretary argues that the Foundation's activities are performed for a "business purpose". This argument is contrary to the District Court's finding that the Foundation is "a corporation organized and operated exclusively for religious purposes. . . ." (Appendix A, App. 2.)

Purportedly in support of his argument, the Secretary quotes the following *portion* of 29 CFR 779.214: "[a]ctivities of eleemosynary, religious, or educational organizations may be performed for a business purpose". (Resp. Br. 18.) He fails, however, to recite the pertinent part of this regulation, which provides:

> However, the non-profit educational, religious, and eleemosynary activities will not be included in the enterprise unless they are of the types which the last sentence of section 3(r), as amended in 1966, declares shall be deemed to be performed for a business purpose. Such activities were not regarded as performed for a business purpose under the prior Act and are not so considered under the Act as it was amended in 1966 except for those activities listed in the last sentence of amended section 3(r). (29 CFR 779.214.)

The last sentence of section 3(r) of the Fair Labor Standards Act deems various activities to be performed for a business purpose, however, with the exception of a school, none of the activities listed in this section are performed by the Foundation. Thus, from the Secretary's own regulations, the Foundation is not an enterprise, other than perhaps in its school activity only.

The Secretary also argues that the tax-exempt status of the Foundation does not require an exclusion from the Act. He goes further and states if a tax-exempt organization carries on business for a "business purpose", the organization is covered. Assuming *arguendo,* it should be noted that the Foundation has not only secured and maintained a 501(c) (3) tax exemption, but it has also received recognition of the Internal Revenue Service (under its close scrutiny) that *none* of its activities are "unrelated trade or businesses" as defined by Section 512 of the Internal Revenue Code. Thus, the so-called "businesses" of the Foundation have been found by the Internal Revenue Service to be services related and connected with the religious nature of the Foundation. (J.A. 93, 94.) Certainly, these facts are more than mere "subjective consideration of religious motivation" as suggested by the Secretary. (Resp. Br. 22.)

Senate and House reports on the 1961 legislation stated that "[e]leemosynary, religious, or educational and similar activities" of non-profit organizations are "not included in the term 'enterprise'" because "[s]uch activities performed by non-profit organizations are not activities performed for common business purpose". (H.R. Rep. 75, 87th Cong., 1st Sess (1961); S. Rep. 145, 87th Cong. 1st Sess. 41 (1961).)

Accordingly, the petitioner Foundation is not an "enterprise engaged in commerce or in the production of goods for commerce" within the meaning and definition of Section 3(s) of the Act. (29 U.S.C. § 203(s).)

IV. The Application Of The Fair Labor Standards Act To The Petitioner Foundation And The Individual Petitioners Is In Violation Of The Free Exercise Of Religion Clause Of The First Amendment To The United States Constitution.

Many times, this Court has recognized that the First Amendment has built a "wall of separation" between Church and State. Though the "wall of separation" between permissible and impermissible intrusion of the State into matters of religion may blur, or become indistinct, or vary, it does and must remain high and impregnable. *McClure v. Salvation Army*, 460 F. 2d 553, 556 (5th Cir. 1972). In *Everson v. Board of Education*, 330 U.S. 1, 67 S. Ct. 504, 91 L. Ed. 711 (1947), it was said, "That wall must be kept high and impregnable. We could not approve the slightest breach." (67 S. Ct. at 513.) Only in rare instances, where a "compelling state interest" is shown to exist, can a court uphold state action which imposes even an "incidental" burden on the free exercise of religion. In this extremely sensitive constitutional area "only the gravest abuses, endangering paramount interest, give occasion for permissible limitation". *Sherbert v. Verner*, 374 U.S. 398, 83 S. Ct. 1790, 10 L. Ed. 2d 965 (1963).

The Secretary has previously suggested that the application of the Act does not prevent the associates from donating their income back to the Foundation.[4] If such is the case, then what is the grave abuse presented in the case.

The three representative associates were clear in describing their beliefs and reasons for their deep rooted concern in being *forced* to accept a wage for work they consider to be for the Lord Jesus Christ. (J.A. 49, 59, 73, 79, 90.)

If the associates do not desire "wages" and since they could, and most assuredly would, simply donate their "wages" back to the Foundation, one must wonder what paramount interests are endangered which justify the Secretary's intervention.

Restrictions on the free exercise of religion are allowed only when it is necessary "to prevent grave and immediate danger to interest which the state may lawfully protect". *Sherbert v. Verner*, 374 U.S. 398, 83 S. Ct. 1790, 10 L. Ed. 2d 965 (1963). To hold that the present case involves a grave and immediate danger is to narrowly construe the First Amendment's Free Exercise of Religion Clause.[5]

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[4]This is also suggested by the American Civil Liberties Union in its Amicus Curiae Brief. (Am. C. Br. 8,9.)

[5]In the Motion for Leave to File and Brief Amicus Curiae of the American Civil Liberties Union in Support of Respondent, it is suggested that the petitioners "may lack standing" to advance the religious rights of the Foundation's associates. (See, Motion For Leave to File and Brief Amicus Curiae, p. 7.) The petitioners remind this Court that the petitioner, Larry La-

(Continued on the next page)

These associates became connected with the Foundation out of desire "to serve the Lord", "to become evangelists", or "to become pastors". (J.A. 94.) Their services with the Foundation are rendered in furtherance of these desires. Likewise, the Foundation's purpose (i.e., to spread the Gospel) is fulfilled through the efforts of the associates. The associates are the ministers of the Foundation's religious beliefs and doctrines. The application of the Act to them *directly* affects their relationship with the Foundation and with its ministry. The Secretary proposes to force them to accept wages for their services, which is contrary to their religious beliefs and "vexing" to their souls.

Surely, the Secretary, in good conscience, cannot say that the associates have not clearly stated the basis for their objection to their being foreed to accept a wage for religious service. Just as a Sunday School teacher would be distressed upon being advised that he must be paid for religious teaching, so are the associates distressed. As stated in the Gospel according to Matthew: "[F]reely ye have received, freely give. Provide neither gold nor silver, nor brass for your purses, nor scrip for your journey. . . ." Matthew 10:8-10. It is also said: "Therefore take no thought, saying, What shall we eat? or, What shall we drink? or, Wherewithal shall we be clothed? . . . But seek ye first the kingdom of God and his righteousness. . . ." Matthew 6:31, 33. The associates are sincerely trou-

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(Continued from previous page)

Rouche, is an associate of the Foundation (Vol. I, pp. 54, 55 and Pet. App. 6) and, consequently, has standing to assert the positions set forth in the Petitioners' Brief on the Merits. Furthermore, the question of standing has not been asserted by the Secretary of Labor in this Court or in any Courts below. (See Resp. Br. p. 33.)

bled over the Secretary's intrusion into their religious desires.

The Secretary argues further that "even if the associates 'desire no compensation for their labor at the Foundation' (Pet. Br. 30), this would not mean, as petitioners imply, that to accept wages in prescribed amounts is contrary to the associates' 'religious convictions'." (Resp. Br. 35.) He goes on to say: "Not desiring additional compensation is not the same thing as believing that receipt of additional compensation would violate their faith." (Resp. Br. 35-36.) Petitioners' objection has been clearly stated in the past and the Secretary's expressed misunderstanding is unjustified. The associates of the Foundation have continuously objected to being forced to accept *any* wage for services which they consider the "work of God". (J.A. 77.) As stated by one of the representative associates: "I believe it would be offensive to me to even be considered to be forced to take a wage. It would be an absolute offense to me." (J.A. 62.) With regard to being forced to receive a wage, another associate stated: "It would defeat my whole purpose. I have given my life to God, and Jesus had died for me. I owe him my life." (J.A. 79.) The associates have undoubtedly presented their position that the receipt of any wage would violate their religious beliefs. To argue that being forced to receive a wage under these circumstances is not an infringement protected by the First Amendment Free Exercise of Religion Clause is absurd.

In the case of *Follett v. Town of McCormick, S.C.*, 321 U.S. 573, 64 S. Ct. 717 (1984), this Court found a town ordinance requiring agents selling books to pay a license fee of $1.00 per day or $15.00 per year to be unconstitutional as an improper restriction on freedom of religion.

In applying the nearsighted reasoning of the Secretary's argument to the case of *Follett,* one would only find a requirement to pay a license fee.

The Secretary also states that the imposition of the provisions of the Act upon the Foundation and its associates would not "infringe upon the associates' 'right to live in the religious setting of the Foundation' ". (Resp. Br. 35.) Such, however, is not the case. The Foundation was incorporated, and is operated and structured as a religious and charitable organization. Those who become associated with the Foundation do so out of religious motives. (J.A. 94.) To label the Foundation as an employer and the associates as employees would destroy the very structure of this organization and would require liquidation of all of the Foundation's assets including the associates' homes, schools, child nursery, and church buildings. (R. Vol. 200, J.A. 93, 94.)[6]

[6]The Secretary states: "If the petitioners can show on remand that the benefits they provide the associates are in fact the equivalent of the minimum wage, then they will be found in compliance with Section 6 of the Act." (Resp. Br. 39.) The trouble with the Secretary in this regard is that he attempts to eliminate or minimize the value of any benefit received by the associates. Even the District Court became distressed over the Secretary's approach in regard to the valuation of benefits. As stated by the District Court to trial counsel for the Secretary: "I think the thing that really distresses me about the Secretary's attitude about this case is, you know, if somebody's father has a heart attack over in Nashville and they give them a plane ticket over there to visit his father, I think the Foundation ought to get credit for that. . . . But, you know, to get up here and take the position that when the Foundation provides transportation to the hospitals and flying people around, and things like that, they're not allowed any credit for that just seems to me like there's not any equity in that. . . ." (R. Vol. VI pp. 41-42.) Furthermore, as noted in the District Court's Memorandum and Order (Appendix A, App. 12), for the entire year of 1976, they gave no credit for housing or feeding any minor children in the Foundation and allowed only $12.05 per month as credit for board for one adult associate and $38.82 per month as credit for lodging.

V. Application Of The Fair Labor Standards Act To The Petitioners Is Violative Of The Establishment Clause Of The First Amendment To The United States Constitution.

Contrary to the Secretary's position, the relationship sought to be regulated is not essentially secular. As set forth in the District Court's amended Order (Appendix A, App. 42-45), the Foundation is not only "restrained and enjoined" from withholding minimum wage and overtime compensation to the associates who worked "at any of the businesses" of the Foundation, but also to "*all* persons who have been associates of the Foundation". (Appendix A, App. 43-44.) (emphasis ours) Thus, the Foundation is required to pay minimum wage and overtime compensation to any associate regardless of the fact that such associate performed no work in the Foundation "businesses". Accordingly, this case involves more than a request to regulate "secular" activity.

VI. The Application Of The Fair Labor Standards Act To The Petitioner Is Violative Of The Equal Protection Component Of The Due Process Clause Of The Fifth Amendment To The United States Constitution.

In the Secretary's response to this point of the argument, he attempts only to distinguish the ACTION volunteer from the associate of the Foundation. No response is made to the unequal treatment between the associates of the Foundation from the individuals expressly exempt from the Act under Section 13 (29 U.S.C. § 213(a)).

The Secretary's attempted application of the Fair Labor Standards Act to the petitioners is an arbitrary action, and such bears no reasonable relation to the purpose sought to be achieved by the Act. Therefore, the application of the Act to the petitioners is violative of the

equal protection component of the Due Process Clause of the Fifth Amendment.

CONCLUSION

Petitioners respectfully request this Court to reverse the decisions of the United States Court of Appeals for the Eighth Circuit and the United States District Court for the Western District of Arkansas.

Respectfully submitted,

GEAN, GEAN & GEAN
Counsel for Petitioners
First America Building
Suite 500, 524 Garrison Avenue
Fort Smith, Arkansas 72901

BY ROY GEAN, JR.